

THE
Parson's Monitor,

Consisting of such *CASES* and
MATTERS as principally
concern the *CLERGY*.

Collected from the *Statute* and *Common Laws*; as also the *Constitutions* and *Canons Ecclesiastical*: Confirmed 1^o *Jac.* Anno Dom. 1603. Together with the *Articles of Religion*, Authority of the *Convocation*, Privilege of *Churches* and *Church-yards*, Payment of *First-fruits* and *Tenths*: In whose Name and Style *Ecclesiastical Courts* are to be kept, and the *Process* issuing out of the same are to run in, and with what Seal to be sealed.

WITH

Several other Matters (never before Extant) very material and necessary to be known by the *CLERGY* in general, and all persons concerned either as *PATRON*, or *INCUMBENT*.

Omnium Legum Inanis est Sensura nisi Divinae Legis imaginem gerit.

By *G. MERITON*, Gent.

L O N D O N,

Printed by the Assigns of *Richard* and *Edw. Atkins*,
Esquires, for *Richard Tonson* within *Grays-Inn*
Gate next *Grays-Inn-Lane*. 1681.

THE
HISTORICAL RECORD

OF THE
CITY OF NEW YORK

FROM 1624 TO 1898

EDITED BY
JOHN C. COOPER

AND
JOHN C. COOPER

NEW YORK
1898

THE
HISTORICAL RECORD

OF THE
CITY OF NEW YORK

FROM 1624 TO 1898

EDITED BY
JOHN C. COOPER

AND
JOHN C. COOPER

NEW YORK
1898

THE
HISTORICAL RECORD

OF THE
CITY OF NEW YORK

FROM 1624 TO 1898

EDITED BY
JOHN C. COOPER

AND
JOHN C. COOPER

NEW YORK
1898

To the Reverend

CLERGY-MEN

O F

ENGLAND.

Worthy Sirs,

HAVING alwaies had a great Honour and Esteem for Men of your Cloath, being descended from a * Clergy-Man my self: I have often debated in my thoughts, how I might lay out some part of that small Talent which God hath blessed me withall to do you Service. And calling to Mind, that Old saying, Ne Sutor ultra Crepidam, I thought it would best become me to keep my self within the Limits of my own Sphear, and so resolved to present you with some little necessary Collection of the Law, relating to Clergy-Men, and having perused Sir

* Grandchild
to Dr.
George Meriton
Dean of York, in the
time of
Archbishop
Mathews.

The Epistle.

John Dodderidge's little Treatise, called A compleat Parson Mr. Hughe's Parsons Law; and Sir Simon Degg's Parsons Counsellor, all relating to the Clergy, I found many things therein, so brief and intricate, that I thought it well worth my time, to enlarge and explain many of them, and to add several other matters which they have not touched, which I imagined would not only be delightful to peruse, but very beneficial to and worthy of the Clergy's knowledge: So I have taken their works in pieces, and framed a new Modell of my own, and out of their works, with some materials of my own, I have reared this small New Edifice; I know it will not pass without it's Censures, for those Inconveniencies which are not discernable upon the projecting of a Modell, are easily discovered, and obvious to the Eye after the House is built. Although I have called this Treatise, the Parson's Monitor, yet I know to the Graver sort it will appear to be no such thing. They perhaps knowing as much if not more then they will find in this Collection, and so cannot be meliorated thereby in their knowledge, yet to the generallity of Clergy-Men, I hope it may
prove

The Epistle.

prove serviceable, and not without it's use also to the other, for though it bring nothing new to them, yet I presume it may prove *Memoriae Amicus*, by continuing those things that are in Memory, Retracting those that are Elapsing, and Retrieving the things that were vanished. It is possible several Persons, especially those who have known my Education, will look upon this undertaking as a great piece of presumption in me, that I (who never had the Honour to assume any greater Title then a Practicer of the Common Law) should publish this Treatise, when such Learned Men in the Laws, as those aforementioned have written upon the same Subject already; To such Carpers my Answer is, I desire they would not condemn me before they hear me speak, for if they please but to give themselves the trouble to Peruse this little Collection, though perhaps at the undertaking thereof, they may proponnd to themselves, that it will be time ill spent, yet when they have done, I hope they will not conclude it time lost, for although they have the Books aforementioned, and so think this useles, yet possibly this may serve as a kind of Paralipomenon to the others, for let me tell them, that they

The Epistle.

will find several things enlarged here, with Additions of several other matters which are not touched there; for I have here brought in the Canons in force, the Articles of Religion, the Privilege of Churches and Church-yards, the Statutes concerning First Fruits, Tenths, and Mortuaries, the Authority of the Convocation and Privilege of the Clergy there, and their menial Servants, and several other matters which they will not meet with in the other Authors: but put the Case I had medled with nothing, but what they have taken notice of, yet the same Dish dressed after another fashion, often gives a fresh Appetite, and for my own part, I have found nothing more delightful or gratefull to my Geniue, then to reade the same Case, reported four or five times over in several Books for it is variety that makes a Feast. But some perhaps will ask why I have not said something relating to Tythes, in Answer to which I say, that Sir Simon Degg hath taken such pains therein, as little or nothing more can or need be said in that point, and besides, every Parson studies more to be his own Monitor in those things then in the particulars which I have here discoursed of, although there be several digressions

The Epistle.

digressions in this ensuing Treatise, which may seem Heterogeneall to the things intended to be discoursed of, yet they falling accidentally in my way, I hope the Candid Reader will rather Pardon then Condemn me for incerting them; for though at first they may appear perhaps Impolite, yet upon second thoughts, they will not (I hope) be adjudged altogether Impertinent; my Intentions at the first undertaking of this Collection were honest and good, and if the Book fail in the Effects, I wish that any of the Clergy would be so kind as to inform me, wherein I might be more serviceable to them, that I might manifest to the World, how ready and willing I am to be,

Reverend Sirs,

Your very humble Servant,

G. Meriton.

*An Alphabetical Catalogue
of the several Books and Au-
thors consulted and made use of
in this insuing Treatise.*

A.

Anderson's reports, 1 part.
Anderson's reports, 2 part.
Book of Articles of Religion.

B.

Bendlowe's reports.
Boulstred's reports, 1, 2, and 3, part.
Bracton.
Britton.
Brooks grand Abridgment.
Bridgman's reports.
Brownlowe's reports, 1, and 2, part.

C.

Book of Canons.
Cook's Institutes, 1, 2, 3, and 4, part.
Cook's reports, 3, 4, 5, 6, 7, 9, 10, 11,
Lib.
Cook's Entries.
Crook's reports, 1, 2, and 3, part.

D.

Davis reports.
Degg's Parsons Counsellor.
Dyer's reports.

Dode-

A Catalogue of the Authors.

Doderidge compleat Parson.

Doctor and Student.

E.

Edward the first.

Edward the third.

Edward the fourth.

F.

Fitz. Natura Brevium.

Fleta.

G.

Godbolts reports.

Godolphins Orphan's Legacy.

Gouldesborough's reports.

H.

Henry the Third.

Henry the Fourth.

Henry the Fifth.

Henry the Sixth.

Henry the Seventh.

Henry the Eight.

Hetley's reports.

Hobart's reports.

Hughe's grand Abridgment, 1 part.

Hughe's Parsons Law.

Hutton's reports.

I.

Jones reports.

K.

Kelloway's reports.

Keebles Statutes.

A

S

Latch's

A Catalogue of the Authors.

L.

Latch's reports.

Leye's reports.

Leonards reports, 1, 2, 3, and 4, part.

Liber Affisar.

Lindwood.

M.

March's reports.

Moor's reports.

N.

Noye's reports.

O.

Owen's reports.

P.

Poulton's Statutes.

Plowden's Commentaries.

Rhopham's reports.

R.

Rastall's Statutes.

Register.

Roll's reports, 1 part.

Roll's Cases, 1, and 2, parts.

S.

Savill's reports.

Swinburns Wills, &c.

V.

Vaughan's reports.

W.

Winch's reports.

Wingate's Statutes.

Yelverton's reports.

A.

A Catalogue of the several
Statutes or Acts of Parliament,
made use of in this Treatise.

Magna Charta, cap. 14.
Marlebridge, cap. 10.

E. 1.

Circumspecte Agatis.

Stat. of Winchester.

Ne Rectores prosteruerunt arbores, &c.

E. 2.

Articuli Cleri, cap. 1. 3, and 4.

E. 3.

50 E. 3. cap. 5.

H. 7.

1 H. 7. cap. 4.

7 H. 7. cap. 13.

H. 8.

21 H. 8. cap. 6.

21 H. 8. cap. 13.

25 H. 8. cap. 19.

25 H. 8. cap. 21.

26 H. 8. cap. 3.

26 H. 8. cap. 14.

27 H. 8. cap. 8.

28 H.

A Catalogue of the Statutes, &c.

28 H. 8. cap. 11.

28 H. 8. cap. 13.

32 H. 8. cap. 22.

33 H. 8. cap. 28.

37 H. 8. cap. 21.

to engolam D A

to returned

to the about

E. 6.

1 E. 6. cap. 1.

2 and 3. E. 6. cap. H

5 E. 6. cap. 4.

5 and 6. E. 6. cap. 1.

5 and 6. E. 6. cap. 4.

7 E. 6. cap. 4.

Q. M.

1 Mar. Sess. 2. cap. 3.

2 and 3. P. & M. cap. 4.

Q. Eliz.

1 Eliz. cap. 1.

1 Eliz. cap. 4.

1 Eliz. cap. 19.

5 Eliz. cap. 1.

5 Eliz. cap. 5.

13 Eliz. cap. 2.

13 Eliz. cap. 5.

13 Eliz. cap. 10.

13 Eliz. cap. 12.

13 Eliz. cap. 20.

14 Eliz. cap. 7.

14 Eliz. cap. 11.

18 Eliz. cap. 11.

31 Eliz. cap. 6.

35 Eliz.

A Catalogue of the Statutes, &c.

35 Elix. cap. 1.

700.

I Fac. cap. 3.

Cor: 12

12 Car. 2. cap. 14.

13 Car. 2 cap. 1.

A
A. A. A. A. A.
A. A. A. A. A.

212
213
214

115 Bellmire's Cafe
 171 Bennett and Blacking
 172 Bennett and Blacking
 173 Bennett and Blacking
 174 Bennett and Blacking
 175 Bennett and Blacking
 176 Bennett and Blacking
 177 Bennett and Blacking
 178 Bennett and Blacking
 179 Bennett and Blacking
 180 Bennett and Blacking

*An Alphabetical Table of the
Several Cases cited in this Col-
lection.*

A.

A Cton and Pitcher,	276
Agard and B. of Peterborough and Denton.	141
Albany and Bishop of S. Asaph,	38 & 149
Arrundel and Bishop of Gloucester, and Chaffin.	

B.

Babington and Wood,	220
Baker and Rogers,	212
Baldock's Case,	
Sir Robert Bannister's Case,	286
Bawderock and Mackaller,	212
Bayly and Murnes,	292
Baskervil's Case,	137
Belfore and Foord,	285
Bellamie's Case,	110
Bennifield and Pickering,	151
Bennet and Edwards,	132
Birt and Manning,	217
Boughton and Gousley,	196
Bunny and Wright, and Stafford,	280
Buc'ks	

A Table of the Cases cited.

Buck's Case,	216
Broom and Hudsons,	195
C.	
Calvert and Kitchin,	136
Canning and New-man,	195
Archbishop of Canterbury, and Corn- Wall,	138
Bishop of Carlisle and Whitton,	149
Carter and Croft,	17
Catesby's Case,	174
Cary and Yeo,	222
Chaffin's Case,	285
Bishop of Chichester and Freeland,	289
Cholmly's Case,	118
Cornwall's Case,	138
Corven and Pim,	109
Cottard and Windet,	294
Cox's Case,	180
Crane and Tayler,	268
Creswick and Rookby,	105
Cross and Stanhope,	105
Cumber and Bishop of Chichester and Green,	138
D.	
Dalton and Pamphlin, and Bishop of Ely,	156
Dothick's Case,	116
Digby's Case,	147
Dobbins and Gerrard,	292
Draper and Stone,	107
Dodson.	

A Table of the Cases cited.

Dodson and Line, 143

E.

Edes and Bishop of Hereford, 124

Elmer and Gale, 273

Parishioners of Esbelborough's Case, 108

Bishop of Ely's Case, 289

Sir William Elvis, and Archbishop of
York and Tayler, 159

Evans and Ascongh, 145

Evans and Heister, 291

Evelin's Case, 107

Eytru's Case, 297

F.

Fairbanck and Durham, 131

Fairchild and Gair, 144 and 155

Flemming's Case, 37

Sir Godfry Foliamb's Case, 129

Fox and Collyer, 278

Freeman and English, 216

G.

Gerrard's Case, 158

Goodale and Butler, 194

Gosnall and Kindlemarch, 298

Green and Guy, 179

Gregory and Oldbury, 214

H.

Hare and Buckley, 17

Harris and Hayes and Nichols, 127

Hele's Case, 124

Bishop of Hereford's Case, 141

Dean

A Table of the Cases cited.

Dean and Chapter of *Hereford*, and Bishop of *Hereford*, 296

Higden's Case, 30

Hind and Bishop of *Chester*, 259

Hitchin and Glover, 130

Holland's Case, 146, 147

Hutchinson's Case, 226

Hunt and Singleton, 282

I.

Jackson's Case, 271

Jefferies and Kenshly and Foster, 111

Jones and Lawrence, 219

Jurden's Case, 132

K.

The King and Bishop of *Chichester*, 183

The King and Champion, 132

The King and Emmorson, 118

The King and Bishop of *London*, and

Baldock, 147

The King and Bishop of *Norwich*, and

Cole and Saker, 212

The King and Bishop of *Worcester*, 146

Knowles and Dobbins, 17

Knowles and Hargrave's, 251

L.

Lancaster and Low, 151

Leak and Bishop of *Coventry* and Ba-

bington, 126

Bishop of *Lincoln*'s Case, 138

Earl of *Lincoln* and Hoskins, 298

Mabel's

A Table of the Cases cited.

M.

Mabic's Case,	296
Mackallor and Toddericks,	223
Marler and Wright, and Green,	279
Marrow's Case,	291
Martin and Gunniston,	305
Martin's Case,	198
Mawnd and French,	287
Morgan and Glover,	179
Mot and Hales,	292

P.

Palmer and Smith,	154
Palmer and Munson,	115
Paget's Case,	112
Paget and Crompton,	111
Palmer and Thorp,	95
Parkhurst's Case,	182
Pascall and Clerk,	221
Penhallow's Case,	116
Perchall's Case,	116
Pescod and Yardley,	131
S. John and Pettit's Case,	298
Phips and Hayter,	147
Sir Edmund Plowden and Oldfield,	286

Q.

The Queen and Blancher,	245
The Queen and Bishop of Lincoln,	138
The Queen and Bishop of Lincoln and Cock,	151
The Queen and Bishop of Gloucester and	

A Table of the Cases cited.

	and Savaker,	171
	The Queen and Bishop of <i>Lincoln</i> and	
	Drewry,	172
	The Queen and Bishop of <i>Lincoln</i> and	
	Skiffin,	173
	The Queen and Bishop of <i>Peterborough</i>	
	and Acton,	176
	The Queen and Bishop of <i>Salisbury</i>	
	& al.	175
	R.	
	Reyner and Parker,	244
	Riersby and Wentworth,	214
	Rickman and Garth,	295
	Robins and James,	179
	Robins and Gerrard, and Prince,	179
	Parishioners of <i>Rovenden's Case</i> ,	107
	S.	
	Saccar's Case,	250
	Sale and Bishop of <i>Coventry</i> and <i>Litch-</i>	
	field,	296
	Bishop of <i>Salisbury's Case</i> , 141 and	250
	Scot and Nicholas, and Brewster and	
	Stubbing,	278
	Searl and Williams,	98
	Sheldon and Brett,	244
	Shepherd and Twoulfy,	194
	Shute and Higden,	30 and 181
	Smalwood and Bishop of <i>Coventry</i> and	
	<i>Litchfield</i> ,	132
	Smith and Shelborn,	216
	Smith	

A Table of the Cases cited.

Smith and Bowles,	284
Smith and Clayton,	121
Smith and Clerk,	30
Specot's Case,	140
Searl's Case,	140
Stanford and Hutchinson	212
Stockman and Withers,	250
Starkey and Brown,	66
<i>T.</i>	
Talentire and Denton,	295
Tomlinson and Crook,	285
<i>V.</i>	
Viner and Eaton,	115
Underhill and Savage,	179
<i>W.</i>	
Waller and Scott,	135
Walker and Lamb,	289
Walter, and D. and C. of <i>Normich</i> ,	282
Watkinson and Man,	176
Webb and Hargrave,	220
Wheeler and Danby,	300
Whetston and Hickford,	172
Whistler and Singleton,	131
Woody and Bishop of <i>Exeter</i> and	
Mannering,	145
Dean and Chapter of <i>Worcester</i> ,	274
Wright's Case,	123
Wright and Bishop of <i>Normich</i> ,	135
Lady Wyche Case,	108
Winchcombe and Bishop of <i>Winche-</i>	
<i>ster</i> ,	

also
an
app
pa.

A Table of the Cases cited.

<i>ster & al.</i>	214
Windsor and Archbishop of Canterbury & al.	128
<i>Y.</i>	
Young and Steel,	289

THE
CONTENTS
OF THE
CHAPTERS.

CHAP. I.

What Qualifications are required by Scripture and Law; in such Persons as intend to enter into the Ministry, and also a Word or two concerning Ordination, and what the Canon requires, as to the apparell and behaviour of Clergy-men, *pa. 1.*

CHAP.

The Contents of the Chapters.

C H A P. II.

What things are required both by the Lawr of this Kingdom, and the Canons in force, to be observed and performed by Ministers, upon and after their Admissi- on, Institution and Induction to a Living; with some few things relating to the Con- vocation, and lastly, the King's Majesties Letters and Directions in the fourteenth Year of his Reign, to the Archbishop of Canterbury, concerning the Clergy,
pa. 15.

C H A P. III.

The Articles of Religion, which every Minister is to subscribe unto both at his Ordination, and at his Admission and Institution to a Living, agreed upon by the Archbishops and Bishops of both Pro- vinces, and the whole Clergy in the Con- vocation holden at London, 1562. put forth by Authority, for avoiding Diversi- ties of Opinions, and for the establishing of consent, touching true Religion,
pa. 111.

C H A P.

The Contents of the Chapters.

C H A P. IV.

Several Cases, touching the Privileges of Ministers and Churches, and Church-yards, pa. 99.

C H A P. V.

Some things necessary for Clergy-men to know, concerning Presentations, Nomination, Deprivation, Resignation, &c. and of avoidance of Spiritual Livings by Death, Creation, Cession, Lapses, &c. pa. 118.

C H A P. VI.

Of Pluralities, Dispensations, and non residence, pa. 159.

C H A P. VII.

Of the Oath which every Minister is to take before his Institution to a Living against Simony, with a Recital of the Statute, and some few Cases concerning the same, pa. 201.

C H A P. VIII.

Of first Fruits, Tenths, Dilapidations, and Mortuaries, pa. 228.

C H A P. IX.

What Qualifications are required in Leases made by Ecclesiastical Persons, pa. 260.

C H A P.

The Contents of the Chapters.

C H A P. X.

How Clergy-Men are incapacitated to take Farms, or follow Secular Affairs, and how they are punishable for Incontinency by their Superiors, and by whose power and Authority, Courts Ecclesiastical are to be kept, and in whose Name and Sittle, their Ecclesiastical Proceſs are to be, and with what Seal to be sealed, pag. 101.

ADVERTISEMENT.

Choice Presidents upon all Acts of Parliament, Relating to the Office and Duty of a Justice of Peace. With necessary Notes and Instructions thereupon, taken out of the said Acts of Parliament, and other particular Cases in Law adjudg'd therein. As also a more usefull Method of making up Court Rolls, then hath been known or hitherto published in Print. By Rich. Kilburne Esq; late one of his Majestie's Justices of the Peace for the County of Kent, and Principal of Staple-Inn. The Second Edition, with many usefull Additions, made publick by G. F. of Grayes-Inn Esq;

Newly Reprinted for R. Tonson, 1681.

T H E

(1)

THE PARSON'S MONITOR.

CHAP. I.

*What Qualifications, are required by
Scripture and Law, in such Persons
as intend to enter into the Ministry,
and also a word or two concerning Or-
dination; and what the Canon re-
quires as to the Apparel and be-
haviour of Clergy Men.*

SAIN T Paul in his first Epistle to
Tymothy, saith, That Deacons must
be grave, not double-tongued, not
given to much wine, not greedy of
filthy lucre, holding the mystery of the
Faith in a pure Conscience, and let these
also (saith the Apostle) first be proved,
then let them use the Office of a Deacon,
being found blameless, and he saith fur-
ther, they must be the Husbands of one
Wife, ruling their Children and own
B
Houses

*What Quali-
fications are
required in
Ministers by
Scripture.*

Houses well. 1 Tim. Chap. 3. ver. 8, 9, 10, and 12.

*What Quali-
fications the
Law re-
quires in
them.*

Thus far speaks *St. Paul*, now observe that the Law requires that every one that intendeth to be a Parson, must Regularly be of free Condition, and not *Grimingus* Out-law'd, nor Excommunicate, nor a *Jew*, *Miscreant*, *Infidel*, *Schismatick*, or *Heretick*; He must also be Conformable to the Government and Doctrine of the Church of *England*, and by the Statute of the 13 *Eliz.* he must be 24 years of age, 13 *Eliz.* cap. 12. & vide 5 *H. 7.* 20. 4. 14 *H. 7.* 28. & *Co. Rep.* 5. lib. 58. d. & *The Parson's Counselor*, cap. 1.

*The dif-
ference be-
tween Ma-
lum in se
and Mala
probitate.*

Neither is one capable of being a Parson, Vicar, &c. If he be guilty of Murther, Manslaughter, Perjury, For-
jury, or other foul crime, That is *Ma-
lum in se*, and in this case it matters not
whether the party be Convicted of this
crime or no, so that the Ordinary have
certain knowledge thereof, but for a
Man to be guilty of haunting of Ale-
houses, or playing at lawfull games,
which are only *Mala Probitate*, and
not *Mala in se*, it is no Impediment to
his being a Parson, Vicar, &c. *Co. Rep.*
5. lib. 58. d. 38. & 5. lib. 58. d. 38. *Dyer*
201. b. *Rep.*

Chap. I.

Rep. French f. 293. b. and 254. b.
and vide Rolls Cases, 2. parts. fo. 355.

2. 1. 4. 5. 6. 8.

Every Parson, Vicar, &c. must also
be competently well learned and skill-
led in the Language the People speak
and understand, where he is to be Par-
son, Vicar, &c. otherwise the Bishop
may refuse him; as it was resolved in
the Case of one *Albany*, in a Quare Im-
pedit against the Bishop of *S. Asaph*,
where the Bishop pleaded that the ser-
vice of the Church, to which the Pre-
sentee was presented, was in the *Welsh*
Tongue: and that the Parishoners un-
derstood not the *English*, and that the
Presentee could not speak *Welsh*, and
therefore he refused him. And all the
Justices held this to be a good Cause of
refusal: for if he understand not them,
nor they him, he cannot instruct his
flock according to his duty and charge.

*m. 29. and 31. Elix. B. B. Albany and
the Bishop of S. Asaph's Case. Cro. Eliz.
f. 218. pl. 5. Reg. cap. 1.*

Note, that Ordination is to be but
four times in the Year, that is to say
the Sunday immediately following the
four Ember weeks, and no Man is to
be made Deacon and Minister together
Illegit

Every Minister
ought to be
learned in
the Language
the People
speak and
understand.

Ordination to
be but four
times in the
Year.

*The penalty
of obtaining
Orders cor-
ruptly.*

upon one Day, *Can.* 31. and 32.

And by the 13 of *Eliz.* it is enacted, that if any Person or Persons whatsoever, shall or do at any time receive or take any Money, Fee, Reward, or any other profit, directly or indirectly, or shall take any Promise, Agreement, Covenant, Bond, or other assurance, to receive any Money, Fee, Reward, or any other profit, directly or indirectly, either to him or themselves, or to any other of their, or any of their Friends, (all Ordinary and Lawfull Fees, only excepted) for, or to procure the Ordaining or making of any Minister or Ministers, or giving of Orders, or Licence, or Licences to Preach, that every Person and Persons so offending, shall for every such offence, forfeit forty Pounds, and the party so corruptly Ordained, or made Minister, or taking Orders, shall forfeit ten Pounds. And if at any time within seven Years next, after such corrupt entering into the Ministry, or receiving Orders, he shall accept or take any Benefice, Living, or Promotion Ecclesiastical, that immediately from and after the Induction, Investing, or Installation thereof, or thereunto had the same Benefice, &c. shall

shall be meerly void: And that the Patron or Person to whom the Advowson, Gift, Presentation, or Collation shall by Law appertain, may present or collate unto, give or dispose of the same Benefice, &c. in such sort to all Intents and Purposes, as if the party so Inducted, &c. were naturally dead; one Moiety of which forfeitures shall be to the Queen, her Heirs and Successors: and the other Moiety to the party that will sue for the same in any of her Majestie's Courts of Record, 13 Eliz. cap. 6. *Cave quid solvis.*

All Ministers are to be made and Consecrated according to the Book of Common-Prayer, as it is now settled, and he that is otherwise made, or present at any other making of them then according to that Book, and shall be thereof Lawfully Convicted by Verdict of Twelve Men, or by his or their Confession, or otherwise for the first Offence, shall be Imprisoned six Months without Bail, for the second Offence, one whole Year, and for the third Offence, during Life, 5 and 6 E. 6. cap. 1 and vide 14. Car. 2 cap. 4.

All Ministers are to be Consecrated according to the Book of Common-Prayer.

None to be
admitted

Deacon or

Priest, except

he exhibit to

the Bishop a

Presentation

of himself, to

some Ecclesiastical preferment, &c.

None is to be admitted, either Deacon or Priest, except he exhibit to the Bishop of whom he desireth Imposition of Hands, a Presentation of himself to some Ecclesiastical Preferment, then void in that Diocess, or shall bring to the said Bishop a true and undoubted Certificate, that either he is provided of some Church, within the said Diocess, where he may attend the cure of Souls, or of some Minister's place, Vacant, either in the Cathedral Church of that Diocess, or in some other Collegiate Church therein, where he may Execute his Ministry: or that he is a Fellow, or in right as a Fellow, or to be a Conductor or Chaplain in some College in Cambridge or Oxford, or except he be a Master of Arts of five Years standing, that liveth of his own charge in either of the Universities: or except by the Bishop himself that Ordains him, he be shortly after to be admitted either to some Benefice or Curateship then void. And if any Bishop shall admit any Person into the Ministry that hath none of these Titles, then the Bishop is to keep and maintain him till he do prefer him to some Ecclesiastical Living; And if the Bishop refuse

Chap. I. ~~Of the Orders of the Clergy~~

refuse to do so, the Archbishop ~~shall~~
with another Bishop, may suspend the
said Bishop from giving of Orders by
the space of a Year, *Can. 33.*

No Bishop is to admit any Person
into Orders, which is none of his own
Diocess, except he be either of one of
the Universities of this Realm, or
bring Letters Dimissory from the Bi-
shop of whose Diocess he is, and exhib-
it Letters Testimonial, of his good
Life and Conversation, under the Seal
of some College in Cambridge, or Ox-
ford, where he remained; or of three
or four Grave Ministers, with other
credible Persons who have known his
Life and Behaviour, by the space of
three Years before, and be able to
yield an account of his Faith in Es-
tate, according to the Articles of Re-
ligion, approved in the Synod of the
Bishops and Clergy of this Realm, *for*
in Dom. 1562. And likewise to be
Deacon is twenty three Years Old
and to be a Priest twenty four Years
complete, *Can. 24. and 13. Eliz. cap.*
12. and vide Co. Inst. 4 part. f. 324.

The Bishop before he admit any
Person into Holy Orders, is either he
examine such Person himself, or cause

No Person is
to be admitted
into Orders,
except he ex-
hibit Letters
Testimonial
of his good
Life and
Conversation,
&c.

None is to be
admitted
into Holy
Orders with-
out Exami-
nation.

some Ministers of his Diocess to examine him; and if any Bishop or Suffragan, admit any to Sacred Orders, who is not qualified and examined, then the Archbishop of that Province, with the assistance of another Bishop, may suspend such Bishop or Suffragan so offending, from making either Deacon or Priest, for the space of Two Years, *Can. 35.*

*Note to
Preach with-
out Licence
and Subscri-
ptions, first,
had and
made.*

And note, that none are to be received into the Ministry; nor suffered to Preach, Catechise, or to be a Lecturer, or Reader of Divinity, in either Universitie, or in any Cathedral, or Collegiate Church, City, or Market-Town, Parish, Church, Chappel, or in any other place, except he be Licenced, either by the Archbishop, or Bishop of the Diocess, (where he is so placed) under their Hands and Seals, or by one of the two Universities, under their Seal; and do first subscribe to these three Articles following, *viz.* First, That the King's Majesty under God, is the only Supream Governor of this Realm, and of all other his Majestie's Dominions and Countries; as well in all Spiritual or Ecclesiastical things or Causes, as Temporal. Secondly, That
the

the Book of Common-Prayer, and of ordering Bishops, Priests, and Deacons, containeth in it nothing contrary to the word of God, &c. Thirdly, That he alloweth of the Book of Articles of Religion, made in the Year, 1562, and acknowledgeth them to be agreeable to the word of God, &c. Which Subscription is thus to be made by such Persons as shall enter into Orders, viz. I. A. B. 'do willingly and *ex Animo*, Subscribe to these three Articles above mentioned, and to all things that are contained in them. And if any Bishop Ordain, Admit, or Licence any Person, except he first Subscribe, as aforesaid, he may be suspended from giving of Orders, and Licences to Preach, for the space of Twelve Months, *Can. 36. & vide Co. Inst. 4 pars f. 324.*

If any Minister after Subscription to the said three Articles do Revolt, he may be suspended, and if after a Month he do not Reform, he may be Excommunicated: and if he submit not within the space of another Month, he may be deposed from the Ministry, *Can. 38.*

The punishment of Revolt after Subscription.

The Penalty
of such Per-
sons as are
admitted to
any Benefice,
or Administer
the Sacra-
ments, not
being Episco-
pally Ordain-
ed

1. Such Persons as are not Episcopally Ordained according to the Book of Common-Prayer, are not capable of, or to be admitted to any Parsonage, Vi-
carage, Benefice, or other Ecclesiastical Promotion, or Dignity whatsoever, nor shall presume to Consecrate and Administer the Sacrament of the Lord's Supper, before such time as he shall be Ordained Priest, according to the Book of Common-Prayer, upon pain of an Hundred Pounds for every offence, one Moiety thereof to the King, and the other Moiety to be divided between the Poor of the Parish, where the offence is Committed, and the Informer: and the Person so offending, to be disabled from taking or being admitted into the Order of Priest-hood, by the space of one Year, then next following, 14 Car. 2 cap. 4.

The Penalty
of such Per-
sons as are
admitted to
any Benefice,
or Administer
the Sacra-
ments, not
being Episco-
pally Ordain-
ed

And if any do affirm or teach, that the form and manner of making, and Consecrating Bishops, Priests, and Deacons, containeth any thing in it that is Repugnant to the word of God, or that they who are so made, are not Lawful-
ly made and Ordained: they are to be Excommunicated, ipso facto, and not to be restored till they Repent, and
2. & Pub.

Publicly Revoke such wicked Embray.

Gen. 2. And with this you is but

Also if any affirm, that the King's Majesty hath not the same Authority in Causes Ecclesiastical, that the godly Kings had, amongst the *Jews*: Or, impeach in any part, his Regal Supremacy: Or, affirm that the Church of *England*, by Law established under the King's Majesty, is not a true and an Apostolical Church: Or, that the Form of God's Worship, contained in the Book of Common-Prayer, and Administration of Sacraments, is Corrupt, Superstitious, and Unlawfull: Or, that any of the 39 Articles of Religion, made in the Year, 1562. are in any part, Superstitious or Erronious: Or, that the Rites and Cerimonies established in the Church of *England*, are wicked, Antichristian or Superstitious: Or, that the Government of the Church of *England*, under his Majesty by Archbishops, Bishops, Deans, Archdeacons, and the rest that bear Office in the same is Antichristian, or Repugnant to the word of God, they are also *ipso facto*, to be Excommunicate, and not to be restored till they Repent, and Publicly revoke such wicked

wicked Errors; *Can. 2, 3, 4, 5, 6, 7.*

The punishment of such as affirm, that such Ministers or refuse to subscribe to the form of God's Worship, in the Church of England, may take unto the Name of another Church, &c.

And if any affirm that such Ministers as refuse to subscribe to the form of God's Worship, in the Church of England, may take unto the Name of another Church, &c. and their Adherents, may take unto them the Name of another Church, not established by Law, or that they a long time groaned under the burthen of certain grievances imposed on them: Or, that there are other Assemblies of the King's Subjects within the Realm (other then such as by the Laws of this Kingdom, are held and allowed to be such) who may rightly challenge to themselves the Name of true and Lawfull Churches: Or, that it is Lawfull for any Ministers or People to joyn together, and make Constitutions in Causes Ecclesiastical, without the King's Authority; They are to suffer the like pain of Excommunication: and not to be restored till Repentance, and Publick Revocation of their Errors: *Can. 10, 11, 12.*

The punishment of those which affirm, that the Sacred Synode of the Nation assembled by the King's Authority is not the true Church by Representation.

Likewise, if any affirm, that the sacred Synode of the Nation assembled in the Name of Christ: and by Authority of the King, is not the true Church of England, by Representation: Or that none are bound by the Decrees of: such Synode, that are not present there themselves

ſelves, or do not agree to them. Such Perſon ſo affirming, is to be Excommuni- cate, and not to be reſtored, till he Repent, and Publickly Revoke his Er- rors, *Can. 139. 140.*

Note, That all Miniſters ſhall uſual- ly wear Gowns with ſtanding Collers, and Sleeves ſtraight at the Hands, or wide Sleeves as is uſed in the Univer- ſities; and in their Journies, they ſhall uſually wear Cloaks, with ſleeves com- monly called Priests Cloaks, without Gards, Welts, long Buttons, or Cuts, and no Eccleſiaſtical Perſon ſhall wear any Coif, or wrought night Cap, but only plain night Cap, of black Silk, Sat- ten, or Velvet; and in private Houſes, and in their Studies, They may uſe any comely and Schollar-like Apparel, provided it be not Cut or Pinkt, and that in Publick they go not in their Dublet and Hoſe without Coats or Caſ- ſocks, and alſo that they wear not any light coloured Stockins, likewise, Poor Beneficed-men and Curates, (not being able to Provide themſelves long Gowns) may go in ſhort Gowns, of the Faſhion aforeſaid, *Can. 74.*

No Eccleſiaſtical Perſons ſhall at any time, other then for their honeſt neceſſi- ties,

*How Mini-
ſters are to
be Apparel-
led.*

*Eccleſiaſtical
Perſons not
to frequent
Taverns or
Ale-houſes*

ties, resort to any Taverns or Ale-houses, neither shall they board or lodge in any such places: Nor shall they give themselves to any base or scil-vile labour, or to drinking, or riot, spending their time idly by Day or by Night; Playing at Cards, Dice; or Tables, or any other unlawfull Game. But at all times convenient, they shall hear or read somewhat of the Holy Scriptures, or shall occupy themselves with some other honest study or exercise, alwaies doing the things that shall appertain to Honesty; and indeavouring to profit the Church of God, having alwaies in mind that they ought to excell all other in purity of Life, and should be Examples to the People, to Live well and christianly, under pain of Ecclesiastical Censures, to be inflicted with severity, according to the Qualities of their Offences, *Can. 75.*

*Ministers not
Relinquish
their call-
ings.*

No Man being admitted a Deacon, or Minister, shall voluntarily Relinquish the same, nor afterwards use himself in the course of his Life, as a *Lay-man*, upon pain of Excommunication; *Can. 76.*

C H A P. II.

What things are required, both by the Laws of this Kingdom, and the Canons in force, to be observed and performed by Ministers: upon, and after their Admission, Institution, and Induction to a Living; with some few things relating to the Composition: And lastly, the King's Majesty's Letters and Directions in the fourteenth year of his Reign, to the Archbishop of Canterbury, concerning the Clergy.

SUCH Person as is Qualified as the Law requires, and hopes to obtain a Living, and is promised to be presented according to Law, must in the first place, get a Presentation from the right and undoubted Patron of the Church, where he designs to be Parson, the form of which Presentation see in the fifth Chapter: and after such Presentation obtained, he is within six Months after the Church becomes void by Death, Creation, or Cession of the last Incumbent, to tender his Presentation to the Bishop of that Diocese, in which the Church is, or to his Vicar

He who is presented to a Living, must carry his Presentation to the Bishop, &c.

car General, or in the Vacation when there is no Bishop of such Diocess, to the Guardian of the Spiritualities, to whom the Law allows a reasonable time to Examine his Abilities; for the Ordinary is not bound to dispatch him as soon as he goes: but may appoint him a convenient time within the six Months, to attend him for his Approbation, *Hob. Rep. f. 317. Hughe's Parson's Law, cap. 11. 15. H. 7. 7. b. Examin del Incumbent, deg. cap. 2. Hughe's grand abridgm, 1 part, p. 134 Case, 5.*

What Ad-
mission and
Institution
signifie.

And if the Bishop or Ordinary, &c. upon Examination of the Clerk find him capable and able, he may then admit and Institute him; Admission in propriety of Speech, is when the Bishop finding the Clerk able saith, *admitto te habilem*, and Institution is when the Bishop saith, *Instituo te Rectorem talis Ecclesie, cum cura Animarum; & accipe curam tuam & meam, &c.* And note, that every Rectory consists of Spiritualities, and Temporalities: and as to the Spiritualities; to wit, *Cura animarum*, he is compleat Parson by the Institution: and may celebrate Divine Service, Preach, &c. but not to the Temporalities as to the *Glebe &c.* for

for he hath no freehold in them till his Induction: *vide Hare and Buckle's Ca. Plc. Com. f. 528. Co. Lit. f. 344. a. and Hill. 41 Eliz. B. R. Digbie's Ca. Co. Rep. 4. Lib. f. 79. a. Hugbe's Grand. Abridgm. 1. part, p. 135. Ca. 7. Goldes. Rep. p. 163. and 164. and vide, 32. H. 6. 28. b. and 33. H. 6. 24. and Hugbe's Parson's Law, cap. 11.*

Note, That the Bishop may InSTITUTE a Clerk as well out of his Diocess, as within it, for as to this matter it is not local, but follows the Person of the Bishop wheresoever he goes, *Cro. Car. f. 342. Hugbe's Gran. Abridgm. 1. part, p. 134. Ca. 7. and vide, 21. Jac. B. R. in Knowle's and Dobbin's Case, Godbolt's Rep. p. 342. pl. 446. Hugbe's Parson's Law, cap. 11. and 27. Eliz. C. B. Carter and Croft's Case.*

A Bishop may InSTITUTE out of his Diocess.

But observe that none can be admitted to any Living till he be a Priest in Orders, which he cannot be by the Statute of Uniformity, till he is four and twenty Years of Age, and if any Person shall be Admitted, Instituted, and Inducted into any Living; before he is in Holy Orders, his Admission, Institution, and Induction, are void, *14. Car. 2. cap. 14.*

None to be admitted to any Living; till he be a Priest in Orders.

And

Every Clerk
to subscribe
to his Decla-
ration, before
his Admissi-
on to a Li-
ving.

And every Clerk before his Admissi-
on to be Incumbent, must subscribe the
Declaration following, to wit, I. B. C.
do declare that it is not Lawfull upon
any pretence whatsoever, to take Arms
against the King; And that I do ab-
hor that Trayterous Position of taking
Arms by his Authority against his
Person; or against those that are Com-
missioned by him. And that I will
conform to the Liturgy of the Church
of England, as it is now established by
Law. And I do declare, that I do hold
there lies no Obligation upon me or
any other Person, from the Oath com-
monly called the Solemn League and
Covenant, to endeavour any change or
alteration of Government, either in
Church or State. And that the same
was in it self, an unlawful Oath, and
imposed upon the Subjects of this
Kingdom, against the known Laws
and Liberties of this Kingdom, 14
Car. 2 cap. 4. After the five and twentieth
Day of March, 1682. There shall be
omitted out of the said Declaration or
acknowledgment the latter part there-
of beginning. And I do declare, that I
do hold there lies no Obligation on me
or any other Person, from the Oath, &c.
In A. After

After this Subscription made, every Parson, Vicar, Curate, and Lecturer, is to procure a Certificate under the Hand and Seal of the respective Archbishop, Bishop, or Ordinary of the Diocese, (who are to deliver the same upon demand) and shall publicly and openly read the same, together with the Declaration or acknowledgment aforesaid, upon some Lord's day, within three Months then next following, in his Parish Church, where he is to Officiate, in the time of Divine Service; (before all the Common Prayer be ended) in the presence of the Congregation there assembled, upon pain to loose his Parsonage, Vicarage, or Benefice, Curate's place, or Lecturer's place, and shall be utterly disabled, and ~~ipso facto~~ deprived of the same: And that the said Parsonage, Vicarage, or Benefice, Curate's place, or Lecturer's place, shall be void, as if he were naturally Dead, 14. Car. 2. cap. 4.

A Certificate to be procured after Subscription, and the same to be read within three Months.

When the Bishop hath Instituted the Clerk, the Ordinary &c. makes a ~~Mandate~~ *Mandate* under Seal to the ~~Archdeacon~~ *Archdeacon* of the place; or to such other Clergy-men as he pleaseth, to Induct the Clerk: and it may be done by the Dean and Chap-

What Induction is, and how to be performed.

ter by Prescription, but not by the Patron, and the usual way of Induction is by the delivery of the Bell-Rope, to the new Parson, who is to toll the Bell, that the People may thereby take notice, when the Archdeacon inducts the Parson: his Fee is 40 Pence, but a Donative may pass by the gift of the Patron, without Institution or Induction, 8. Aff. pl. 13. Davis, Rep. f. 46. b. Roll's Cases, 2 part, f. 356. B. 1. and 357. C. 2, 3, 4, 5, 6, 7, Deg. cap. 2. & vide, 38. E. 3. 3. b. 11. H. 4. 9, and 10.

What Remedy, where the Archdeacon refuseth to Induct.

If the Archdeacon will not Induct the Clerk, after such time as the Bishop hath admitted and Instituted him, and directed his *Mandate* to the *Archdeacon*, to admit him: some have been of Opinion, that the Clerk may have an action of the Case against him, because the Induction is a Temporal act, but others are of Opinion (and so it was adjudged, p. 13. *Elix. C. B.*) that a Citation shall be awarded in such Case out of the Spiritual Court, against the Archdeacon, to answer the same there, where he shall be punished, if there be Cause, because the Archdeacon may alledge some special Cause, which by the Spiritual Ecclesiastical Law, the Clerk.

Clerk ought not to be Inducted: which Cause may not be triable or determinable in the Temporal Court, *Fitz. N. B.*
 47. *H. Hughe's Par. Law, cap. 12.*

All and every Person and Persons, Ecclesiastical Persons to take the Oath of Supremacy. that shall be Preferred, Promoted, or Collated to any Archbishoprick, or Bishoprick, or to any other Spiritual Promotion, or Ecclesiastical Benefice, Promotion, Dignity, Office, or Ministry: before he or they take upon him, or them to Receive, Use, Exercise, Supply or Occupy any such Promotion; they shall take the Oath of Supremacy before such Persons as have Authority to admit any such Person to any such Office or Ministry; 1 *Eliz. cap. 1.* 5 *Eliz. cap. 1.*

And when any Clerk is admitted, Clerks to swear Canonical Obedience. and instituted to any Benefice, he is usually sworn also to Canonical Obedience, to his Diocesan, *Co. Inst. 4 part. f.*
 324.

The form of the Oath of Supremacy is as followeth. *viz.* I. A. B. 'do utterly declare and testify in my Conscience: That the King's Highness, is the 'only Supream Governor of this Realm, 'and of all other his Majestie's Dominions, and Countries, as well in Spiritual
 'or

'or Ecclesiastical things, or Causes as
 'Temporal, and that no foreign Prince,
 'Person, Prelate, State, or Potentate,
 'hath or ought to have any Jurisdiction,
 'Power, Superiority, Preeminence, or
 'Authority Ecclesiastical, or Spiritual,
 'within this Realm; And therefore I do
 'utterly renounce and forsake all for-
 'eign Jurisdiction, Powers, Superiori-
 'ties, and Authorities; And do Promi-
 'se, that from henceforth, I shall bear
 'Faith, and true Allegiance to the King's
 'Highness, his Heirs, and Lawfull Suc-
 'cessors, And to my Power, shall Assist
 'and Defend all Jurisdiction, Privile-
 'ges, Preeminences, and Authorities,
 'granted or belonging to the King's
 'Highness, his Heirs and Successors: or
 'United and Annexed to the Imperial
 'Crown of this Realm: So help me
 'God, and the Contents of this Book.

The Penalty
 for refusing
 the Oath.

If any Person or Persons, who shall
 be Promoted, Preferred, or Collated, to
 any Spiritual Promotion, or Ecclesiasti-
 cal Benefice, do Peremptorily refuse to
 take this Oath upon tender thereof,
 then he or they so refusing, shall pre-
 sently be adjudged disabled in the
 Law to receive, take, or have the
 same

same Promotion Spiritual or Ecclesiastical, to all Intents, Constructions and Purposes; 1 Eliz. cap. 1. and by the 5 Eliz. cap. 1. Refusal of the Oath upon the first tender, being Indicted or Presented, according to the Laws of the Realm: within one Year after such refusal, incurs the danger of a Premunire; and if after the space of three Months, after the first tender, it be refused a second time upon tender, such second refusal is High Treason; and this second tender, Principally concerns Ecclesiastical Persons, 5 Eliz. cap. 1.

If any Person or Persons, dwelling within this Kingdom: or any other the King's Dominions, shall by Writing, Printing, Teaching, Preaching, express words, deed, or act, advisedly, maliciously, and directly affirm, hold, stand with, set forth, maintain, or defend, the Authority or Spiritual, or Ecclesiastical Jurisdiction, of any foreign Prelate or Person, &c. heretofore claimed or usurped, within this Realm; or other the King's Dominions; or shall advisedly put in use, or Execute any thing for the extolling, &c. any such pretended Power or Authority.

The Penalty
for extolling
any foreign
Power.

And

And being thereof Lawfully Convicted and Attainted, for the first Offence, forfeits all his Goods and Chattels real and Personal, and if he be not worth twenty Pounds, then to suffer a Years Imprisonment, without Bail, besides the forfeiture of such Goods and Chattels; and shall also loose all his Spiritual Promotions, and Dignities whatsoever: and that the same shall be utterly void, as if the Incumbent were Dead, and the Patron, &c. may present, *de novo*: The second Offence Incurs the danger of a Premunire, and the third Offence, is High-Treason; the Offences for Preaching, Teaching, or Words to be Indicted, within the space of a Year, next after such Offence committed, and if any be Imprisoned, for any of the said Offences, of Preaching, Teaching, or Words: and be not Indicted within half a Year after such Offence committed, then to be set at Liberty: two Witnesses or more, to prove such Indictment, and to be brought Face to Face, upon the parties arraignment, to give Evidence, 1 *Elliz. cap. 1.*

The Penalty
for defending
the Author-
ity of the Bi-
shop of
Rome.

And if any Person or Persons, shall by Writing, Cyphering, Printing, Preaching, or Teaching, Deed or Act, advisedly

sedly and willingly set forth, &c. or defend the Authority of the Bishop of Rome, or of his See, or any Bishop thereof, heretofore claimed within this Kingdom, or any other of his Majesty's Dominions; such Person or Persons so offending, and their Abettors being Lawfully Indicted and presented for the same, within One Year, after, and attainted at any time after, shall for such First Offence, incur the danger of a Premunire: and for the Second Offence, suffer such like Pains, Forfeitures, Judgments, and Executions, as for High Treason; Corruption of Blood, and Forfeiture of Dower, excepted, 5 Eliz. cap. 1.

Note, That in *Hillary* Term, the 11 Eliz. it was Resolved by the Justices of both Benches; at *Serjeants Inn*, in *Fleet-street*, the Chief Baron being also present: That if a Man imports Books over Sea, written against the Supreamacy, knowing the effect of them; and utters them to any Subjects here, he is within the compass of the *stat. 5 Eliz. cap. 1.* but the Receivers of such Books, if they in Conference of them, do not allow them, they are not within the said Statute; but if they in Con-

*What shall be
said an Of-
fence, within
the 5 Eliz.*

ference, they do allow them; then they are also within the Statute, and so are they who hear the Contents, and affirm them to be good: The like of him, who conveys the Books secretly to his Friends; and perswades them to be of the same Opinion. And so of them, who Print and utter such Books within this Realm: Also, if such Books written within the Realm, are conveyed out, and are there bought, read, and Conference had upon them: such Persons sending them out, are within the Compass of the Statute, *Dyer f. 281. b. and 282 a.*

*Ecclesiastical
Persons to
take the Oath
of Allegi-
ance.*

By the *stat. 7 Jac. cap. 6.* every Archbishop and Bishop, are to take the Oath of Allegiance, set down in the *3 Jac. cap. 4.* before the Lord Chancellor, or Lord Keeper of the Great Seal, for the time being; and all Parsons, Vicars, and Curats, and all other Spiritual Persons whatsoever, taking Orders, are to take the same Oath, before the Bishop of the Diocese, or other Ordinary in the same, sitting in open Court, the Tenure of which Oath followeth, in these words, *viz. I. A. B.*
 I do truly and sincerely Acknowledge,
 I Confess, Testifie, and Declare in my
 Conscience

‘ Conscience before God and the World.
‘ That our Sovereign Lord King
‘ *Charles*, the Second, is Lawfull and
‘ Rightfull King of this Realm, and of
‘ all other his Majestie’s Dominions and
‘ Countries ; And that the Pope neither
‘ of himself, nor by any Authority of
‘ the Church, or See of *Rome*, or by any
‘ other means with any other, hath any
‘ power or Authority to depose the King;
‘ or to depose any of his Majestie’s King-
‘ doms, or Dominions ; or to Authorise
‘ any Foreign Prince, to invade or annoy
‘ him, or his Countries ; or to dis-
‘ charge any of his Subjects of their Al-
‘ legiance, and Obedience, to his Maje-
‘ sty ; or to give Licence, or leave to any
‘ of them, to bear Arms, raise Tumult,
‘ or to offer any violence or hurt to his
‘ Majestie’s Royal Person, State, or Go-
‘ vernment, or to any of his Majestie’s
‘ Subjects, within his Majestie’s Domini-
‘ ons. Also, I do swear from my Heart,
‘ that notwithstanding any Declaration
‘ or Sentence of Excommunication’,
‘ or Deprivation made or granted, or to
‘ be made or granted, by the Pope, or
‘ his Successors; or by any Authority de-
‘ rived, or pretended to be derived from
‘ him, or his See, against the said King,

his Heirs or Successors, or any Absoluti-
on of the said Subjects, from their Obe-
dience: I will bear Faith, and true
Allegiance to his Majesty, his Heirs and
Successors; and him and them will de-
fend, to the uttermost of my power,
against all Conspiracies and Attempts
whatsoever, which shall be made a-
gainst his or their Persons, their Crown
and Dignity, by reason or colour of
any such Sentence or Declaration, or
otherwise; and will do my best endea-
vour to disclose, & make known unto
his Majesty, his Heirs and Successors,
all Treasons and Trayterous Conspira-
cies, which I shall know or hear of, to
be against him or any of them. And I
do further swear, that I do from my
Heart, abhor, detest, and abjure, as Im-
pious and Heretical, this damnable
Doctrine and Position, That Princes
which be Excommunicated, or depriv-
ed by the Pope, may be deposed or
murthered, by their Subjects, or any
other whatsoever. And I do believe, & in
my Conscience am resolved, that nei-
ther the Pope nor any Person whatso-
ever, hath power to absolve me of this
Oath, or any part thereof, which I ac-
knowledge by good and full Authori-
ty

ty to be Lawfully Ministred on to me;
 and do renounce all Pardons, and Dis-
 pensations to the contrary. And all
 these things I do plainly and sincerely
 acknowledge, and swear, according to
 these expresse Words, by me spoken, and
 according to the plain and common
 sense, and understanding of the same
 Words, without any equivocation, or
 mental evasion, or secret reservation,
 whatsoever: And I do make this Re-
 cognition and acknowledgment hear-
 tily, willingly, and truly, upon the true
 Faith of a Christian, so help me God,
 3 *Jac. cap. 4.*

Note, That every Person that is ad-
 mitted to a Benefice with cure, must
 within two Months after his Inducti-
 on to the same, reade the 39 Articles
 of Religion (set down *verbatim*, in the
 next Chapter) in the same Church, where
 he shall have cure; in the time of
 Common-Prayer there, (that is, after
 some part thereof be reade, and before
 all the Prayers be done) and then de-
 clare his unfeigned assent thereunto,
 and must be admitted to Administer the
 Sacraments, within one Year after his
 Induction, if he be not admitted so
 before; and if he fail in either of these

*Ministers to
 read the 39
 Articles of
 Religion,
 within Two
 Months after
 Induction.*

things, he shall be (*ipso facto*) immediately deprived, 13. *Eliz. cap. 12.*

*The reading
of the Arti-
cles, and
subscription
must be ab-
solute.*

And observe, that this reading of the Articles, must be of the very Book it self and no other, and it must be *verbatim*, as it is in the Book, and not otherwise; and the subscription must be absolute and not qualified, as to say, I subscribe them with this or the like addition, *viz.* so far forth as the same are agreeable to the Word of God, for if the subscription be not absolute, it is not good: and so it was resolved, *m. 33. and 34 Eliz. B. R. in Smith's and Clerk's Case, Cro. Eliz. f. 252. p. 19. Co. 4 part, Inst. f. 324. & vide, H. 22. and 23 Car. 2. C. B. Rot. 680. Shute's and Higden's Case, where Higden lost the Rectory of Elm, in the County of Somerset, for not reading the Articles within two Months after his Induction, Vaugh. Rep. f. 129.*

*Every Person
put into any
Ecclesiastical
Benefice, is
within two
Months after
Induction, to
read the
Morning and
Evening
Prayers, &c.*

Every Person also, who shall be presented, collated, or put into any Ecclesiastical Benefice or Promotion; is within two Months after Induction or Installation in the Church, Chapel, or place of publick Worship belonging to his said Benefice or Promotion; upon some Lord's-day, publicly, openly, and solemnly,

solemnly to read the Morning and Evening Prayers, appointed to be read by, and according to the Book of Common-Prayer, now appointed and allowed, at the times thereby appointed; and after such reading thereof, shall openly and publickly before the Congregation there assembled, declare his unfeigned assent and consent to the use of all things therein contained and prescribed in these following Words, and no other, viz. *I. A. B. do here declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the Book Intituled, The Book of Common-Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the form or manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons. And every Person, who (without some Lawfull Impediment be allowed by the Ordinary) shall neglect or refuse to doe the same within the time aforesaid; (or in Case of such Impediment, within one Month after such Impediment*

C. 4.

diment removed) shall (*ipso facto*) be deprived of all his said Ecclesiastical Benefices and Promotions; & the Patrons may present again, as if such Persons were naturally dead 14 *Car. 2. cap. 4.*

*Incumbents
Resident,
and keeping
Curates to
reade the
Common-
Prayers, once
every
Month
ten times.*

In all places, where the proper Incumbent of any Parsonage, or Vicarage, or Benefice with cure, doth reside on his Living, and keeps a Curate, the Incumbent himself in Person, (not having some Lawfull Impediment, to be allowed by the Ordinary of the place) shall once every Month at least, openly and publickly read the Common-Prayers, and Service prescribed, in and by the Book of Common-Prayer, and also Administer each of the Sacraments and other Rites, if there be occasion, in the Parish Church or Chapel, of or belonging to the same Parsonage, Vicarage, or Benefice, on pain of Five Pounds to the use of the poor of the Parish, for every Offence, upon Conviction by Confession or proof of two Witnesses on Oath before two Justices of the Peace, and in default of payment within ten days, to be Levied by distress and sale of his goods, and Chattels, by the Church-Wardens or Overseers of the poor of the same Parish,

rish, by Warrant from the said Justices, rendering the Surplusage to the party,
14 Car. 2. cap. 4.

In all cases of avoidance or deprivation (*ipso facto*) by virtue of the Stat. 14. Car. 2. no Title to confer or present by Lapse, shall accrew, but after six Months after notice of such deprivation given by the Ordinary to the Patron, or such sentence of deprivation, openly and publicly read in the Parish Church of the Benefice, Parsonage, or Vicarage, becoming void, or whereof the Incumbent shall be deprived, 14 Car. 2. cap. 4.

No Lapse to
Incur upon
avoidance on
the Stat. 14
Car. 2. with-
out notice gi-
ven.

Every Person who shall be Licensed and appointed, or received, as a Lecturer to Preach upon any day of the week, in any Church, Chapel, or place of publick Worship, the first time he Preacheth, (before his Sermon) shall openly and publicly read the Common-Prayers, appointed to be read for that time of the day, and declare his assent to the Book, as aforesaid; and upon the first Lecture day of every Month, afterwards, so long as he continues Lecturer, and Preaches there, at the place appointed for his said Lecture or Sermon, before his said Ser-

Lecturers o-
reade the
Common-
Prayers
at their en-
trance, and
once every
Month after

mon, he must also read the said Prayers, and declare his assent to the Book, as aforesaid; and for neglect hereof, every such Lecturer is disabled from thenceforth to Preach the said, or any other Lecture or Sermon, in the said, or any other Church, Chapel, or place of publick Worship, untill such time as he Conform in all points, as aforesaid; but if the said Sermon or Lecture, be to be Preached or read in any Cathedral, or Collegiate Church, or Chapel, it is sufficient for the Lecturer at the said time, to declare his assent to the said Book of Common-Prayer, in Form as aforesaid; 14 Car. 2. cap. 4.

When any Sermon or Lecture is to be Preached, the Common-Prayers shall be read.

Every time, when any Sermon or Lecture is to be Preached, the Common-Prayers, and Service, appointed for that time of the day, shall be publickly and openly read by some Priest or Deacon, in the Church, Chapel, or place of publick Worship, where the said Sermon or Lecture is to be Preached, before such Sermon or Lecture be Preached, and that the Lecturer then to Preach, shall be present at the reading thereof. But this is not to extend to the publick University Lectures, but that they may be Preached as formerly they used, 14. Car. 2. cap. 4. No

No Form or Order of Common Prayers, Administration of Sacraments, Rights, or Ceremonies, are to be openly used in Church or Chapel, or other publick place of Worship, other then what is prescribed in the Book of Common Prayer aforesaid; but the said Prayers and Service in the Chapels or other publick places of the Colleges and Halls in both the Universities, and in the Colleges of *Westminster, Winchester, and Eaton*, and in the Convocations of the Clergie in either Province may be in Latin. 14 Car. 2 cap. 4.

No Order of Common-Prayer, but what is in the Book of Common-Prayer, to be used.

And if any Minister refuse to use the same Form and Order of Prayers, &c. according to the said Book, or wilfully use any other Rite, Ceremony, Order, or Form of Prayers, or Administration of the Sacraments, &c. openly or privily then is prescribed there; or shall Preach, Declare or Speak any thing in the derogation or depraving of the said Book or any thing therein contained, or of any part thereof, and be thereof lawfully convicted by verdict of twelve men, or by his own Confession, or by the notorious Evidence of the Fact, shall for the first Offence forfeit to the King's Highness

The Penalty for refusing to use the Common-Prayers, or using any other Form of Prayers.

ness the profit of such one of his Spiritual Benefices or promotions as his Majesty shall Assign or Appoint, for one whole year, then next following after such Conviction, and suffer six Months Imprisonment without Bail; and for the second Offence they forfeit all their Spiritual promotions, and the Patrons may present as if the parties were naturally dead; and for the third Offence they are to be Imprisoned during Life, and if the person offending have no Spiritual promotion, then the first Offence is Imprisonment six Months without Bail; and the second Offence Imprisonment during Life. 2. 3. Eliz. 6 cap. 1. and by the 1 Eliz. cap. 2. the first Offence aforesaid forfeits the profits of all his Spiritual promotions for a year, and to suffer six Months Imprisonment without Bail; the second Offence a years Imprisonment without Bail, and (*ipso facto*) to be deprived of all his Spiritual promotions, and the Patrons to present as aforesaid; and the third Offence Imprisonment during Life, and (*ipso facto*) to be deprived of all his Spiritual promotions; and if such Person have no Spiritual promotion then the first Offence is Imprisonment

ment for a year without Bail ; and the second Offence during Life ; both these Statutes of the 2, and 3, *Eliz. 6 cap. 1.* and 1, *Eliz. cap. 2.* are to have Relation to the Book of Common Prayer now used. 14 *Car. 2. cap. 4.* one *Flemming* was Indicted a second time for giving the Sacrament of Baptism in other Form than is prescribed in the *stat. 1 Eliz.* and in the Book of Common Prayer, and it was Awarded that he should suffer Imprisonment for a year, and should be Adjudged (*ipso facto*) deprived of all his Spiritual promotions. *m. 26, and 27, Eliz. B. R. Flemming's Case, Leon. Rep. 1. parte f. 295. pl. 403.*

If any Person or Persons whatsoever shall in any Interludes, Plays, Songs, Rymes, or by other open words declare or speak any thing in derogation of the Common Prayer Book, or of any thing therein contained, or shall by open Act, Deed, or by open threatening compel or cause, or otherwise procure or maintain any Parson, Vicar, or other Minister, in any Cathedral or Parish Church, or Chapel, or other place to say any Common or open Prayer, or to Administer any Sacrament otherwise than is mentioned in the Common-Prayer Book,

The Penalty for depraving of the Common Prayer Book, or compelling any Minister, &c. to say any other Common-Prayer.

Book, or shall unlawfully interrupt them in saying or singing of the said Prayers, according to the said Book, and be thereof Lawfully Convicted, as aforesaid; for the first Offence, he forfeits to the King's Majesty, ten pounds, and if not paid within six weeks after Conviction, then instead of the said ten pounds, to suffer three Months Imprisonment, without Bail; the second Offence, to pay twenty pounds, and if not paid within six weeks after Conviction, then instead thereof, to suffer six Months Imprisonment, without Bail; and for the third Offence, to forfeit all his Goods and Chattels, and suffer Imprisonment during Life, 2. 3 *Eliz. 6. cap. 1.* but by the 1 *Eliz.* the first of these Offences, is an hundred Marks, forfeiture: and if not paid within six weeks, to suffer six Months Imprisonment without Bail; the second Offence, is four hundred Marks, and if not paid within six weeks, to suffer twelve Months Imprisonment without Bail; and the third Offence, is a forfeiture of all their Goods and Chattels, and Imprisonment during Life. But no Person is to be Impeached for any of these Offences, or the Offences mentioned

ed in the last Section, unless he be Indicted at the next General Sessions, to be holden before any Justices of Oyer, and Terminer, or Justices of Assize, next after such Offence, committed or done, nor is any one to be punished twice for one Offence, that is both by the Ecclesiastical Judge, and Civil Magistrate: 1 *Eliz. cap. 2.* these statutes are to have Relation to the Common-Prayer Book, now used, 14 *Car. 2. cap. 4.*

Any Man understanding the Greek, Latin, and Hebrew Tongue, or other strange Tongue, may say the Common-Prayers before-mentioned, in Latin, or any such other Tongue, saying the same privately, as they do understand, and in the Universities of Cambridge, and Oxford, they may use and exercise in their Common and open Prayer in their Chapels, (being not Parish Churches) or other places of Prayer, the Mattens, Evening Song, Litany, and all other Prayers (the Holy Communion Excepted) prescribed in the said Book, in Greek, Latin or Hebrew, and all Men, as well in Churches, Chapels, Oratories, or other places, may use openly, any Psalms or Prayer, taken out of the Bible

Any Man may say privately the Common-Prayer in Hebrew &c. or such other Language as he understands.

Bible at any time, nor letting or omitting thereby the service, or any part thereof mentioned in the Book of Common-Prayer, 2. 3 Eliz. 6. cap. 1.

*The Penalty
against such
persons who
Preach and
are disabled
by 14. Car. 2.*

If any Person or Persons, who do not Conform, and are disabled to Preach by the statute of the 14 Car. 2. shall, during such time as they continue so disabled, Preach any Sermon or Lecture: that then for every such Offence, the Person and Persons so offending, are to suffer three Months Imprisonment in the common Goal, without Bail; and any two Justices of the Peace, of the County, and the Mayor or other chief Officer of any City or Town Corporate, upon Certificate from the Ordinary of the place, to him or them of the Offence committed, may commit the Person or Persons to the Goal of the County, City, or Town Corporate, accordingly, 14 Car. 2. cap. 4.

*The Penalty
for refusing
to hear Com-
mon Prayer,
and being
present and
joyning with
other Religi-
ous Assem-
blier.*

If any Person or Persons, above the age of sixteen Years, shall obstinately refuse to repair to some Church, Chapel, or usual place of Common-Prayer, and shall forbear by the space of a Month, to hear Divine Service; and shall either of him or themselves, or by the perswasion of any others, willingly

ly joyn in, or be present at any Assemblies, Conventicles, or Meetings, under colour or pretence of the exercise of Religion, contrary to the Laws and Statutes of this Realm; every Person so offending, and being Lawfully Convicted, are to be committed to Prison, there to remain without Bail, till they Conform and yield to come to some Church, Chapel, or usual place of Common-Prayer, and hear Divine Service established according to Law; and make such open Submission and Declaration of their said Conformity, as hereafter follows, and if the Person offending, shall not within three Months after Conviction Conform and make Submission being required thereunto by the Bishop of the Diocess, or any Justice of the Peace of the County where the party is, or by the Minister or Curate of the Parish, then such Offender shall abjure the Realm: and refusing to abjure, or returning again after abjuration without the King's Licence, shall be adjudged a Felon, and suffer as a Felon: But if such party, before he be warned to make abjuration, do repair to some Parish Church, on some Sunday, or Festival day, and hear

hear Divine Service, and before Sermon time, or reading of the Gospel, and make open Submission; then the Offender is to be clearly discharged from all the Penalties and Punishments aforesaid, 35 Eliz. cap. 1. 16 Car. 2. cap. 4.

Popish Recusant and Feme Covert not to abjure.

No Popish Recusant, or Feme Covert, shall be compelled to abjure by virtue of the said Act, 35 Eliz. and every Person that shall abjure by virtue thereof, or refuse to abjure, shall forfeit to the King's Majesty, all his Goods and Chattels, for ever: and loose all his Lands and Tenements, during his Life; but the Wife not to loose her Dower; nor any Corruption of Blood to be for any of the said Offences, and the Heir to enjoy the Lands, and Tenements after the Offender's Death, 35 Eliz. cap. 1.

The Form of Submission.

The Form of the Submission aforementioned, is to be in these words, viz. I. A. B. do humbly confess and acknowledge, that I have grievously offended God, in contemning his Majestie's Godly and Lawfull Government, and Authority; by absenting my self from Church, and from hearing Divine Service, contrary to the Godly Laws and Statutes of this Realm: and in using and frequenting

ing disordered, unlawfull Convencicles, and Assemblies, under pretence and Colour of Exercise of Religion; And I am heartily sorry for the same, and do acknowledge and testify in my Conscience, that no other Person hath or ought to have, any Power or Authority over his Majesty; And I do promise and protest, without any dissimulation, or any colour or means of any dispensation, that from henceforth, I will from time to time, obey and perform his Majestie's Laws and Statutes, in repairing to the Church, and hearing Divine Service; and to my uttermost, endeavour to maintain and defend the same, 35 Eliz. cap. 1.

Note, That if after such Submission, the Offender Relaps, then he looseth all advantage got by his Submission; and shall be in the same condition, as if such Submission had never been made. And every Minister, or Curate of every Parish where such Submission is made, is to enter the same into a Book, to be kept for that purpose; and within ten days then next following, to Certifie the same in writing to the Bishop of the same Diocess, 35 Eliz. cap. 1. this stat. is declared to be still in force, by the 16 Car. 2. cap. 4.

*The Penalty
of Relapsing
after Sub-
mission.*

Observe,

*Masters of
Colleges
&c.*

*to Subscribe
to the Arti-
cles of Reli-
gion, and
Book of
Common-
Prayer, &c.*

Observe, That the Governour, or Head of every College and Hall, in either of the Universities; and the Colleges of *Westminster*, *Winchester*, and *Eaton*, within one Month after his Election, or Collation, and Admission into the said Government, or Headship; must openly and publickly, in the Church, Chapel, or other publick place of the same College or Hall, and in the presence of the Fellows, and Scholars of the same, or the greater part of them, then Resident, Subscribe unto the Book of Articles of Religion; and declare his unfeigned assent and consent unto, and approbation of the same; and to the use of all the Prayers, Rites, and Ceremonies, Forms, and Orders, in the Book of Common-Prayer: And they must also once every quarter of a Year at least (not having a Lawfull Impediment) openly and publickly read the Morning Prayer, and Service, in and by the said Book, appointed to be read in the Church, Chapel, or other publick place of the same College or Hall, upon pain, to loose and be suspended of, and from all the benefits and profits belonging to the same Government, and Headship; by the space of
six

six Months, by the visitor, or visitors of the same College or Hall; and being suspended for the causes aforesaid, if they do not at, or before the end of six Months, after such suspension, Subscribe unto the said Articles, and Book, and declare their consent thereunto, as aforesaid; or read the Morning Prayer, and Service, as aforesaid; then such Government or Headship shall be, (*ipso facto*) void, 14 *Car. 2. cap. 4.*

If any Person Ecclesiastical, or having Ecclesiastical Living, shall advisedly maintain or affirm any Doctrine, directly contrary, or repugnant, to any of the nine and thirty Articles of Religion; and being Convented before the Bishop of the Diocess, or the Ordinary, shall persist therein, or not revoke his Error; or after such revocation, affirm the same again, either of these Offences shall be just cause to deprive such Person of his Ecclesiastical Promotions; and the Bishop of the Diocess, or the Ordinary may deprive him, 13 *Eliz. cap. 12.*

Every Minister is to administer the Sacrament of the Lord's Supper in both kinds, that is to say, of Bread and Wine, to every Person that humbly and devoutly

The punishment for affirming any Doctrine, contrary to the 39 Articles of Religion, or any of them.

The Sacrament to be Administred in both kinds.

devoutly desires it, and shall at least one day before, exhort the People to prepare themselves for it, 1 Eliz. 6 cap. 1. And the forfeiture for using any other Form of Administration of the Sacraments of Baptism, and the Lord's Supper than is set down in the Book of Common Prayer, for the first, second, and third Offence you may see before in this Chapter.

The Penalty for depraving the Sacrament of the Lord's Supper, or Administring the same not being Ordained a Priest.

If any Person shall deprave, despise or contemn the Sacrament of the Lord's Supper by any contemptuous words, and be thereof lawfully convicted within three Months after such Offence committed, by a Jury of twelve men upon the Testimony of two lawful Witnesses, in any of the four quarter Sessions, he is to be Imprisoned, and make Fine and Ransome at the King's Will and Pleasure. 1 Eliz. 6. cap. 1. And he that shall Administer the Sacrament of the Lord's Supper, who is not Ordained a Priest according to the Book of Common Prayer, forfeits an hundred pounds. 14 Car. 2 cap. 4.

Ministers to give notice the Sunday before they Administer the Sacrament; the Pa-

Every Minister is to give warning to his Parishioners publickly in his Parish Church at Morning Prayer, the Sunday before every time of his Administring the

the Sacrament, for their better preparing of themselves; and every Parishioner is to Communicate at the least three times in the year (whereof *Easter* is to be one) and the Minister is first to receive it himself, and deliver it in both kinds to every Communicant severally, and no Bread and Wine newly brought in must be used, before the words of Institution be rehearsed when the Bread and Wine are upon the Table; and every Minister possessed of a Benefice with Cure (who keeps a Curate under him) and every other Stipendary Preacher that readeth any Lecture, Catechiseth, or Preacheth in any Church or Chapel, must twice every year upon two several Sundays, Forenoon and Afternoon in his Church or Chapel read Divine Service himself, and as often every year Administer the Sacraments of Baptism (if there be any to be Baptised) and of the Lord's Supper upon pain of Suspension or Removal from his place by the Bishop of the Diocese, until he submit to perform the said Duties. And no Minister is to Preach or Administer the Communion in any private house, except in Case of Necessity, where one is so Impotent that

Parishioners to Communicate three times in the year, and every Minister who keeps a Curate must twice every year Administer the Sacraments himself, &c.

that he cannot goe to the Church, and being dangerously sick desires to receive the Communion, upon pain of Suspension for the first Offence, and Excommunication for the second; but in houses where there are Chapels allowed by the Ecclesiastical Laws, the Chaplains may Preach or Administer the Communion in such houses in the Chapels there only, but the Lords and Masters of such houses and their Families must receive the Communion at least once every year in their own Parish Churches; and no person is to refuse the Communion at the hands of an unpreaching Minister upon pain of Suspension, and Excommunication after a Months obstinacy; and if any Parson, Vicar or Curate, receive any such Persons to the Communion, which are out of his own Church and Parish, thereby strengthening them in their Errors, he may be Suspended and not released thereof till he promise not to offend therein afterwards, *Car.* 21, 22. 56, 57-71.

The Communion to be Administred in Colleges, &c. the first or second Sunday

Note, that the Communion is to be Administred in all Colleges and Halls within both the Universities, the first or second Sunday of every Month, and the

the Masters, Fellows and Schollers, ^{in every} and all the rest of the Students, ^{Month, &c.} Officers, and all other the Servants, are to Communicate four times in the year at the least, kneeling decently upon their knees when they receive it; and all Deans, Wardens, Masters, or Heads of Cathedral and Collegiate Churches, Prebendaries, Cannons, Vicars, petty Cannons, Singing-men, and all others are also to Communicate four times in the year; and in all Cathedral and Collegiate Churches, it is to be Administred on principal Feast-days, sometimes by the Bishop if then present, and sometimes by the Dean, and at sometimes by a Cannon or Prebendary, the principal Minister using a decent Cope, and being assisted with the Gospeller or Epistler; and in such Cathedral and Collegiate Churches in time of Divine Service and Prayers, when there is no Communion, it is sufficient to wear Surplices onely, but all Deans, Masters, and Heads of Collegiate Churches, and Cannons, and Prebendaries being Graduates, are to wear such Hoods with their Surplices as are agreeable to their degrees, and all Ministers saying the publick Prayers, or

D Admi-

Administ'ring the Sacraments or other Rites of the Church are to wear decent Surplices with sleeves to be provided at the charge of the Parish, and such as are Graduates must upon their Surplices at such times wear such Hoods as are agreeable to their degrees, which no Minister must wear (being no Graduate) under pain of Suspension; but such as are no Graduates may instead of Hoods wear some decent Tippet of black, so it be not Silk. *Can.* 23, 24. 25. 58.

*What Par-
sons Mini-
sters may re-
fuse to admit
to the Com-
munion*

No Minister is to admit, to the receiving the Holy Communion, any of his Parishoners, who are openly known to live notoriously in sin, without repentance; nor such as are at variance with their Neighbours, till Reconciliation; nor any Church-Wardens or Sidemen, who have neglected or refused to present such publick Offences, as they themselves know are committed within their Parishes, or are notoriously offensive to the Congregation there: nor are the Ministers to give Communion to any but such as kneel, nor to any that refuse to be present at publick Prayers, or deprave publickly the Book of Common-Prayer, or any thing that

that is contained in the nine and thirty Articles of Religion, or in the Book of ordering Priests and Bishops: nor to any that have spoken against his Majestie's Supremacy; under pein to be suspended, unless every such person do first acknowledge to the Minister before the Church-Wardens, his Repentance for the same, and promise by word (if he cannot write) to doe so no more, and if he can write, then to give it under his hand to the Minister, who is to send it to the Bishop of the Diocese or Ordinary of the place; Provided that every Minister so repelling any for the causes aforesaid, upon complaint to the Ordinary shall obey his Order and Direction therein; and the Minister is to observe whether all his Parishioners come so often every year to the Communion as is required, and whether any Strangers come commonly from other Parishes to his Church, and shall acquaint their Minister with it, least they be such as their own Ministers turn back, that so they may be remitted and sent home to their own Parish Churches and Ministers, there to receive the Communion with the rest of their own Neighbours. *Can. 26, 27, 28.*

Ministers not
to delay
Christning,
or Burial,
Registers to
be kept, &c.

No Minister is to delay the Christning of any Child that is brought to him upon Sundays or Holy-days to be Christned, nor to Bury any Corps brought to the Church or Church-yard (convenient warning being given him thereof before) upon pain in either of these cases to be suspended by the Bishop of the Diocese for three Months, unless the party to be Buried were excommunicated *majori excommunicatione*, and in such case he may refuse to bury him; and if an Infant be weak and in danger of Death, the Minister upon notice and request thereof is to goe to the place where it is, and Baptise the Infant without delay, upon like pain as aforesaid, and not to be restored till he promise before the Ordinary not to incur the like again willingly; but if the Minister keep a Curate, then this shall not extend to the Parson or Vicar, but to the Curate; and no Minister can urge any Parent to be present, nor is any Parent to be Godfather for his own Child, nor is any Godfather or Godmother to make any other answer than is prescribed by the Book of Common-Prayer; or to be admitted to be Godfather or Godmother to any Child at Christ-

Christning or Confirmation, before they have taken the Communion; nor is any Minister to omit Signing every Infant at Baptism with the Sign of the Cross; and in every Parish there must be provided a Parchment-Book at the Parish charge, for Registring all Christnings, Weddings and Burials in; and this Book is to be kept in a Coffer with three Locks and Keys, whereof one is to remain with the Minister, and the other two with the Church-Wardens, and upon every Sabbath-day after Morning or Evening Prayer, they are to take the Book out of the Coffer, and the Minister in the presence of the Church-Wardens must write down in the said Book, the Names of all persons Christned, together with the Names and Surnames of their Parents, and also the Names of all persons Married and Buried in that Church in the week before, and the day and year of every such Christning, Marriage, and Burial, and then the Book to be laid up again; and to every page of the Book when it is filled with Subscriptions, they are to Subscribe their Names, and the Church-Wardens once every year within a Month after the five and twentieth

day of March are to Transmit a true Coppy thereof to the Bishop of the Diocese or his Chancellour, Subscribed with their hands as aforesaid, to the end the same may be faithfully preserved in the Registrie of the said Bishop, which Certificate is to be received without Fee. *Can. 68, 69. 29. 30. 70.*

*Ministers to
reade the
Common-
Prayer upon
Holy-days,
and all Wed-
nesdays and
Fridays, &c.*

The Common-Prayer is to be said or sung reverently upon all Holy-days, appoynted by the Book of Common-Prayer, and their Eves, at the usual time of the days in such place of the Church, as the people may be most Edified; and all Ministers are to observe the Rites and Ceremonies prescribed by the said Book, without diminishing or adding any thing; and Ministers upon Wednesdays and Fridays weekly, though they be not Holy-days, are to say the Littany, and give warning to the people to repair to the Church by the Tolling of a Bell; and in the whole Service and Administration of the Holy Communion, in all Colleges and Halls in both the Universities, the Ceremonies, &c. prescribed by the Book of Common-Prayer, are to be duly observed, without adding or diminishing any thing, and all the

the Masters, Fellows, Schollers, and Students of such Colleges and Halls in their Churches and Chapels upon all Sundays, Holy-days, and their Eves, at the time of Divine Service must wear Surplices, and the Graduates Hoods upon their Surplices according to their several Degrees. *Can. 14, 15, 16, 17.*

No Minister not Licensed by the Bishop to Preach, is to take upon him to expound any part of the Scripture: but is to reade the Homilies without making a gloss upon them; nor is any Minister to suffer any Man to Preach within his Church or Chapel, but such as are Lawfully Licensed; nor are the Deans, Presidents, and Residentiaries, of any Cathedral or Collegiate Church, to suffer any stranger to Preach without Lawfull Licence; and if any such stranger in his Sermon, Preach any thing contrary to the Word of God, or the nine and thirty Articles of Religion; the Dean or Residents shall by their Letter, subscribed with some of ther Hands that heard him, so soon as they can give notice thereof to the Bishop of the Diocese: and the Church-Wardens and Side-men, are to have a

None to expound unless he be a Licensed Preacher, &c.

D 4 Book,

Book, wherein they are to take care that every strange Minister, that Preacheth in their Church, shall subscribe his Name, the day when he Preached, and Bishop's Name, from whom he had his Licence. And no Preacher before he hath acquainted the Bishop of the Diocese, and received his Order, is purposely to Impugne any Doctrine delivered by any other Preacher in the same Church, or any other near adjoining, and if any offend herein, the party grieved, or Church-Wardens are to acquaint the Bishop, and not to suffer him to Preach there any more: unless he promise to forbear all such matter of Contention; till the Bishop take Order therein, who is withall speed so to proceed, that publick satisfaction may be made in the Congregation where the Offence was given, and if either party offending do appeal, he must not Preach (*Pendente Lite*) Can. 49, 50, 51, 52, 53.

Ministers to
Catechise
every Sunday
before Evening
Prayer,
and to Mar-
ry none with-
out Licence,
or asking in
the Church
&c.

Every Parson, Vicar, or Curate, upon every Sunday and Holy-day, before Evening Prayer, is, for half an hour or more, to examine and instruct the Youth and Ignorant Persons of his Parish, and teach them the Catechism, set

set forth in the Book of Common-Prayer: and if any Minister neglect, for the first Offence, he is to be sharply reprov'd by the Ordinary, upon complaint made; the second time wilfully offending, is suspension; and the third time, Excommunication; and all Fathers, Mothers, Masters, or Mistresses neglecting to send their Children, Servants, or Apprentices, to be Catechised, or the Servants, or Apprentices, refusing to go to learn, are to be suspended, and if they persist so by the space of a Month, then to be Excommunicated. And every Minister that hath cure, is to prepare, make able, and procure, as many as he can, to be brought and confirmed by the Bishop; and every Bishop or his Suffragan, in his accustomed Visitation, is in his own Person to Confirm such, and if in that Year, by reason of some Infirmary, he is not able Personally to Visit, then he is not to omit it the next Year after. And no Minister, upon pain of Suspension; (*ipso facto*) for three Years, is to celebrate Matrimony, between any Persons, without a Faculty or Licence, granted by such as have Episcopal Authority; or the Commissary for Faculties, Vicars

General of the Archbishops, and Bishops, *Sede plena*, or *Sede vacante*, the Guardian of the Spiritualities, or Ordinaries exercising of right Episcopal Jurisdiction, in their several Jurisdictions respectively, except the Banes of Matrimony, have been published three several Sundays, or Holydays, in the time of Divine Service, in the Parish Churches, or Chapels, where the said parties dwell; neither shall any Minister under the like pain, Marry any such Licensed Persons, in any other place, but in the Church or Chapel, where one of them dwelleth, and between the hours of eight and twelve, in the Forenoon, in time of Divine Service; nor when Banes are thrice asked, (and no Licence necessary) till the Parents or Governors of the parties to be Married, being under the age of one and twenty Years, shall either personally or by sufficient Testimony signify to him their consents to the said Marriage. And if any Minister under colour of any peculiar Liberty or Privilege, claimed to appertain to certain Churches, shall offend herein, he may be suspended for three Years, by the Ordinary of the place, where the offence was committed:

ted : and if the Minister remove from such place before suspension, then may the Ordinary of the place, where he remaineth, upon the other Ordinarie's Certificate, under Hand and Seal, execute that censure upon him ; *Can. 59, 60, 61, 62, 63, 101.*

Every Parson, Vicar, or Curate, is *Ministers to bid Holy-days, conferr with Recusants, &c.* solemnly to bid Holy-days, or Fasting-days, the Sunday before they fall, as the Common-Prayer Book directs, and all Ministers are solemnly in time of Divine Service, in their Parish Churches, upon some Sunday, to denounce Recusants and Persons Excommunicate : and every Preaching Minister, having any Popish Recusant, or Recusants in his Parish, is to confer with them, to see if he can reclaim them from their Errors : The Minister also, or Curate, when any Person is sick in their Parish, (having knowledg thereof) if the disease be not known or probably suspected to be Infectious, are to repair to instruct and comfort them, after the Order of the Communion Book, if he be no Preacher, and if he be a Preacher, then as he shall think most convenient ; and when any is dying, then a Bell shall be tolled, and the Minister

Minister then is to perform his last duty, and after the party's death, (if it so fall out) there shall be rung no more, but one short Peal, and one other before the Burial, and one other after the Burial. And no Minister, without the Bishop's Licence under Hand and Seal, is to keep any solemn Feasts, either in publick or in private Houses, other than such as by Law are, or shall be appointed, nor shall be willingly present at any of them, under pain of suspension the first fault, Excommunication, the second; and deposition from the Ministry the third: Nor shall any Minister without such Licence, as aforesaid, hold any meetings for Sermons, termed Prophecies, or Exercises, in Market Towns, or elsewhere, under the same pains: neither may any Minister upon any pretence whatsoever, either of possession or obsession; by Fasting and Prayer, attempt to cast out any Divil or Divils, under pain of being accounted an Impostor, and to be deposed from the Ministry; And no Priests or Ministers of the Word of God, are to hold private Conventicles, which may in any way tend to the impeaching or depraving of the Doctrine
of

of the Church of *England*, or Book of Common-Prayer, or any part of the Discipline, established in the Church of *England*, upon pain of Excommunication, (*ipso facto*) *Can.* 64, 65, 66, 67. 72, 73.

If any Minister or other Person, by ^{*The Penalty for Preaching, or Teaching, that eating Fish or forbearing Flesh, is of necessity to Salvation.*} Preaching, Teaching, Writing, or open Speech, maintain the eating of Fish, or forbearing of Flesh, to be of necessity to Salvation or the Service of God, otherwise than other publick Laws are and be, they may be punished as spreaders of false News, by the *stat.* 5 *Eliz.* and it is there also enacted, that if any Parson, Vicar, or Curate, do Licence any Person to eat Flesh on Fish days, other than such who are sick, and evidently appear to have need thereof, by reason of their sickness, the Licence shall be void: and every such Parson, Vicar, or Curate, shall forfeit for every such Licence otherwise granted, five Marks, the Offence to be prosecuted within half a Year after it is committed, or else no loss or forfeiture to be answered, 5 *Eliz. cap.* 5.

If any Minister or other Person during the King's life, do maliciously and advisedly by Writing, Printing, ^{*The Penalty for declaring that the K. is an Heretick, &c.*} Preaching,

Preaching, or other Speaking, publish or declare that the King is an Heretick or Papist, or that he endeavours to introduce Popery; or if they incite or stir up the people to the hatred or dislike of his Person or Government, and being thereof Legally convicted, such person so offending is made incapable of holding, injoying, or exercising any place, office, or promotion Ecclesiastical, Civil, or Military; and if they preach or maintain, &c. that the Parliament begun the third of November 1640. is yet in being, or that there is any Obligation on the King or any other person, from any Oath, Covenant, or Ingagement whatsoever, to change the Government in Church or State; or that the two Houses of Parliament, or either of them have a Legislative power without the King, such person offending herein incurs the danger and penalty of a præmunire. 13 Car. 2. Cap. 1.

What Statutes Ministers are to read in their Churches;

Every Minister is once every year in his Church upon some Sunday in the time of the greatest Assembly, to read the Statute of the 5 and 6 Eliz. 6. cap. 1. and shew the power and effect of the unanimous Prayers of God's people

ple in their necessities; and every Minister is also every year the Sunday before the fifth day of *November*, publickly to reade to his Parishioners in his Church, after Morning-Prayer or Preaching, the Statute of the 3 *Jac. cap. 1.* And they are also twice every year, upon some Sunday after Evening-Prayer, to reade in their Parish Churches the Statute of the 20 *Jac. cap. 20.* against prophane cursing and swearing; and once every year upon some Sunday or Holyday in the Afternoon before Divine Service, they are to reade the Book of Canons, agreed upon in the Synod begun at *London Anno Dom. 1603.* and every Minister every year in his Church the Sunday next before the 29 day of *May* at Morning-Prayer, is to reade the Statute of the 12 *Car. 2. cap. 14.*

Ministers before their Sermons, Lectures and Homilies, are to Pray first for the Holy Catholick-Church of Christ, through the whole World, and especially for the Churches of *England, Scotland and Ireland*; then for the King, Queen, and Royal Family; next for all Arch-Bishops, Bishops, and other Pastors and Curates of God's Holy Word

*What Order
Ministers are
to observe in
their Prayer
before their
Sermons, &c.*

Word and Sacraments; then for the King's Privy-Council and all the Nobility and Magistrates of his Realm, and for the Commons that they may live in true Faith and fear of God, in humble Obedience to the King, and Brotherly Charity one to another; and lastly they must praise God for all those who have departed out of this Life in the Faith of Christ, and must pray to God that we by Grace may learn to follow their Good Example, that after this Life ended, we may be partakers with them of the Glorious Resurrection of the Life Everlasting, and must always conclude with the Lord's Prayer; *Can. 55.*

*The Supreme
Ecclesiastical
power in
the King.*

Note, That the King hath the Supreme Ecclesiastical Power in him, as it hath been held and agreed, and may without Parliament make Orders and Constitutions for the Government of the Clergy, and may deprive them if they obey not, and they can make no Canons or Constitutions without his Assent. *Cro. Jac. f. 37. Mo. Rep. f. 155. pl. 1043. and Vaugh. Rep. f. 329.*

*The power of
the Convoca-
tions.*

But some Clergy-men seem to think, and others do not stick to say that no Orders or Constitutions can be made

to

to bind them but what are agreed upon in the Convocations of the Clergy, therefore I think it will not be amiss to insert here the Authority of the Convocation, as my Lord Coke sets it down in his fourth part of his Institutes, which take as followeth, he saith it is called Convocation a Convocando, because they are called together by the King's Writ; and their Authority (being never assembled together but by the King's Writ) was to deal with Heresies, Schisms, and other meer Spiritual and Ecclesiastical Causes, and therein they did proceed *juxta Legem Divinam & Canones Sanctæ Ecclesiæ*, and as they could never assemble but by the King's Writ, so they were oftentimes commanded by the King's Writ to deal with nothing that concerned the King's Laws of the Land, his Crown and Dignity, his Person, or his State, or the State of his Council or Kingdom; and so whatsoever Act is done in the Convocation, is under the Power and Authority of the King, but not *à contra*, what he doth, under them, see the King's Letters in the conclusion of this Chapter, *vide Co. Inst. 4 part f. 322. 26 H. 6. 13. and 21 Eliz. 4. f. 45. a. p.*

Vava-

Vavasour, and *f. 45. 6 p. Starkey and Brown*, and *Rolls Cases*, 1 p. *f.*

No Canons to
be made in
the Convoca-
tion without
the King's
Licence.

And the Lord Coke saith further that the King did often appoint Commissioners by writ to sit with them at the Convocation, and to have Consuſance of ſuch things as they meant to eſta- bliſh; that nothing ſhould be done in prejudice *ut ſupra*: And therefore the Statute of 25 H. 8 cap. 19. (whereby it is provided that no Canons, Conſtitutions, or Ordinance ſhould be made or put in Execution within this Realm, by Authority of the Convocation of the Clergy, which were contrariant, or repugnant to the King's Prerogative Royal, or the Cuſtomes, Laws, or Statutes of this Realm) is but declaratory of the old Common-Law, but by the ſaid Act their Jurisdiction and Power is much leſſened concerning making of new Canons, for they muſt have both Licence to make them, and after they be made, they muſt have the King's Royal Aſſent to the allowance thereof, before they be put in Execution, 25 H. 8. cap. 19. Co. Inſt. 4 part. *f. 323.*

The King's
Letters of
direction to

The King's Maſteſty, in his Letters
and Directions to the Archbiſhop of

Canter-

Canterbury, dated the fourteenth Year of his now Majestie's Reign, in the Month of *October*, declares there to this effect: First, That no Preachers in their Sermons, shall presume to meddle with matters of State, to modell new Governments, or take upon them to Declare, Limit, or Bound out the Authority and Power of Sovereign Princes, or to State and Determine the difference between Princes and People, but that as they have occasion, they Faithfully tell the People of their duty of Subjection and Obedience to their Governors, Superior and Subordinate of all sorts, and to the established Laws, according to the Word of God, and the Doctrine of the Church of *England*, as it is contained in the Homilies of Obedience, and Articles of Religion, set forth by publick Authority: Secondly, That they spend not their time in the search of speculative and abstruse Notions, especially in and about the deep points of Election, and Reprobation; the Incomprehensible manner of the Concurrence of God's free Grace, and Man's free Will, and such Controversies as depend thereon. And that however, they do not presume positively and

the Archbishop of Canterbury concerning the Clergy.

and doctrinally, to determine any thing concerning the same: Thirdly, That they forbear in their Sermons, ordinarily and causelessly to enter upon the handling of any other Controversies, of less moment and difficulty. And when occasionally they be invited, by their Text or Auditory, to fall into them, that they doe it with all Modesty, Gravity, and Candor : asserting the Doctrine and Discipline of the Church of *England*, from the Cavils and Objections of such as are Adversaries to either, without bitterness, railing, jeering, or other unnecessary or unseemly Provocation: Fourthly, That they Catechise the Younger sort according to the Book of Common-Prayer, and in their ordinary Sermons, do chiefly insist upon Catechistical Doctrines, (containing the necessary Truths of Christian Religion) and setting forth withall, what Influence such Doctrine ought to have in their Lives and Conversations; and stirring up the People by their Lives and Doctrine, to the practice of such Religious and Moral duties, as are the proper result of the said Doctrines, as Self-denyal, Contempt of the World, Humility, Patience, Meekness, Temperance,

perance, Justice, Mercy, Obedience, and the like: and to hate and shun sin, especially the sins so rise, and common amongst us, and more especially, those usually called the seven deadly sins, and all kind of Debauchery, Sensuality, Rebellion, Prophaneness, Atheism, and the like. And that where there is any Exercise in the Afternoon, that there it be specially spent, in explaining some part of the Church Catechisme, or some Scripture, that may lead to the handling and explaining of it; or that may conduce to the Exposition of the Liturgy, and Prayers of the Church: And Lastly, That they labour with their People, to draw them from Idle, Debauched, Prophane Courses, and persuade Men to frequent Divine Services, Sabbath-days, and other Festivals, appointed to be kept solemn, and prevent them from haunting Taverns and Alehouses, or to use unlawfull sports on the Lord's day.

C H A P.

C H A P. III.

The Articles of Religion, which every Minister is to subscribe unto, both at his Ordination, and at his Admission and Institution to a Living; agreed upon by the Archbishops and Bishops, of both Provinces, and the whole Clergy in the Convocation holden at London, 1562. put forth by Authority: for avoiding diversities of Opinions, and for the establishing of consent, touching true Religion.

I. *Of Faith in the Holy Trinity.*

1. *Article.* **T**Here is but one Living and true God, everlasting, without Body, Parts, or Passions; of Infinite Power, Wisdom, and Goodness, the maker and preserver of all things, both Visible, and Invisible. And in Unity of this God-head, there be three Persons, of one Substance, Power, and Eternity: the Father, the Son, and the Holy Ghost.

2. *Of*

2. *Of the Word of God, which
was made very Man.*

The Son, which is the Word of the 2. Article.
Father, begotten from everlasting of
the Father, the very and Eternal God,
of one Substance with the Father, took
Man's Nature in the Womb of the
Blessed Virgin, of her Substance; so
that two whole and perfect Natures,
that is to say, the God-head, and Man-
hood, were joyned together in one Per-
son, never to be devided, whereof is
one Christ, very God, and very Man,
who suffered, was Crucified, Dead and
Buried, to Reconcile his Father to us;
and to be a Sacrifice, not only for ori-
ginal Guilt, but also for all actual sins
of men.

3. *Of the going down of Christ into
Hell.*

As Christ died for us, and was Buri- 3. Article.
ed: So also it is to be believed, that he
went down into Hell.

4. *Of the Resurrection of Christ.*

Christ

4. Article.

Christ did truly rise again from Death, and took again his Body, with Flesh, Bones, and all things appertaining to the Perfection of Man's Nature, wherewith he ascended into Heaven, and there sitteth until he return to Judge all Men at the last day.

5. *Of the Holy Ghost.*

5. Article.

The Holy Ghost proceeding from the Father and the Son, is of Substance, Majesty, and Glory, with the Father and the Son, Very and Eternal God.

6. *Of the Sufficiency of the Holy Scriptures, for Salvation.*

6. Article.

Holy Scripture containeth all things necessary to Salvation: so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man, that it should be believed as an Article of the Faith, or be thought requisite or necessary to Salvation. In the name of the Holy Scripture, we do understand those Canonical Books of the Old and New Testament, of whose Authority was never any doubt in the Church.

7. *Of*

7. Of the Old Testament.

The Old Testament is not contrary *7. Article.* to the New, for both in the Old and New Testament, everlasting Life is offered to Mankind by Christ, who is the onely Mediator between God and man, being both God and man; wherefore they are not to be heard, which say that the old Fathers did look only for transitory promises, although the Law given from God by Moses, as touching Ceremonies and Rites, does not bind Christian men, nor the civil precepts thereof ought of necessity to be received in any Common-wealth; yet notwithstanding no Christian man whatsoever is free from the obedience of the Commandments, which are called moral.

8. Of the three Creeds.

The three Creeds, Nice Creed, Athanasius Creed, and that which is commonly called the Apostles Creed, ought thoroughly to be received and believed, for they may be proved by most certain Warrants of Holy Scripture. *8. Article.*

E

9. Of

9. Of Original, or Birth-sin.

9. Article.

Original sin standeth not in the following of *Adam* (as the *Pelagians* do vainly talk) but it is the fault and corruption of the Nature of every man, that naturally is ingendred of the Offspring of *Adam*, whereby man is very far gone from Original Righteousness, and is inclined to evil, so that the flesh lusteth against the Spirit, and therefore in every Person born into the World, it deserveth Gods wrath and damnation. And this Infection of Nature, doth remain, yea, in them that are Regenerated, whereby the Lust of the Flesh, called in Greek *φρόνημα σαρκός*, which some do expound the wisdom, some sensuality, some the affection, some the desire of the Flesh, is not subject to the Law of God. And although there is no condemnation for them that Believe and are Baptized, yet the Apostle doth confess, that concupiscence and lust hath of it self the Nature of sin.

10. Of free Will.

10. Article.

The condition of Man after the fall of *Adam*, is such that he cannot turn and prepare

prepare himself by his own Natural strength and good works, to Faith and calling upon God; wherefore we have no power to doe good Works pleasant and acceptable to God, without the grace of God preventing us, that we may have a good Will and Working with us, when we have that good Will.

11. Of the Justification of Man.

We are accounted Righteous before *11. Article.* God, only for the merit of our Lord and Saviour Jesus Christ, by Faith, and not for our own works or deservings. Wherefore that we are justified by Faith only, is a most wholesome Doctrine, and very full of comfort, as more largely is expressed in the Homily of Justification.

12. Of good Works.

Albeit, That works which are the *12. Article.* Fruits of Faith, and follow after Justification, cannot put away our sins, and endure the severity of God's Judgment, yet are they pleasing and acceptable to God in Christ; and do spring

out necessarily of a true and a lively Faith; insomuch, that by them, a lively Faith may be as evidently known, as a Tree discerned by the Fruit.

13. *Of Works before Justification.*

13. *Article.*

Works done before the Grace of Christ, and the Inspiration of his Spirit, are not pleasing to God, forasmuch as they spring not of Faith in Jesus Christ; neither do they make Men meet to receive Grace, (or as the School Authors say) deserve Grace of Congruity: Yea, rather for that they are not done as God hath willed and commanded them to be done, we doubt not but they have the Nature of sin.

14. *Of Works of Supererogation.*

14. *Article.*

Voluntary Works, besides, over and above God's Commandments, which they call Works of Supererogation, cannot be taught without Arrogancy, and Impiety; for by them Men do declare, that they do not only render unto God, as much as they are bound to do, but that they doe more for his sake, then of bounden duty is required: Whereas,

Whereas, Christ saith plainly, when ye have done all that are commanded to you, say, we be unprofitable Servants.

15. Of Christ alone without sin.

Christ in the truth of our Nature, made like unto us in all things, (sin only excepted) from which he was clearly void, both in his Life, and in his Spirit; he came to be the Lamb without spot, who by Sacrifice of himself once made, should take away the sins of the World: and sin (as *S. John* saith) was not in him; but all we the rest (although Baptized, and Born again in Christ) yet offend in many things; and if we say we have no sin, we deceive our selves, and the truth is not in us.

15. Article.

16. Of sin after Baptism.

Not every deadly sin willingly committed after Baptism is sin against the Holy-Ghost, and unpardonable: wherefore the grant of Repentance is not to be denied to such as fall into sin after Baptism; after we have received

16. Article.

the Holy Ghost, we may depart from grace given and fall into sin; and by the grace of God (we may) arise again, and amend our Lives, and therefore they are to be condemned, which say they can no more sin as long as they live here, or deny the place of forgiveness to such as truly Repent.

17. Of Predestination and Election.

17. Article.

Predestination to life is the everlasting purpose of God, whereby (before the foundations of the World were laid) he hath constantly decreed by his Counsel, secret to us, to deliver from curse and damnation those whom he hath chosen in Christ out of Mankind, and to bring them by Christ to everlasting Salvation, as Vessels made to honour; wherefore they which be indued with so excellent a Benefit of God, be called according to God's purpose by his Spirit, working in due season; they through grace obey the calling; they be justified freely; they be made Sons of God by Adoption; they be made like the Image of his only begotten Son Jesus Christ; they walk Religiously in good Works; and at length by
God's

God's mercy they attain to everlasting Felicity. As the Godly consideration of Predestination and our Election in Christ is full of sweet, pleasant, and unspeakable Comfort to godly persons, and such as feel in themselves the working of the Spirit of Christ, mortifying the works of the Flesh, and their earthly Members, and drawing up their minds to high and heavenly things, as well because it doth greatly establish and confirm their Faith of Eternal Salvation, to be enjoyed through Christ, as because it doth fervently kindle their Love towards God: so for curious and carnal persons, lacking the Spirit of Christ, to have continually before their Eyes the Sentence of God's predestination, is a most dangerous downfall, whereby the Devil doth thrust them into desperation, or into wretchedness of most unclean Living, no less perilous than desperation. Furthermore we must receive God's promises, in such wise as they be generally set forth to us in Holy Scripture, and in our doings, that will of God is to be followed, which we have expressly declared unto us in the word of God.

18. Of obtaining Eternal Salvation only by the Name of Christ.

- 18. Article.* They are also to be had accursed, that presume to say that every man shall be saved by the Law or Sect which he professeth, so that he be diligent to frame his Life according unto that Law, and the light of Nature; for Holy Scripture doth set out unto us only in the Name of Jesus Christ, whereby men must be saved.

19. Of the Church.

- 19. Article.* The visible Church of Christ is a congregation of faithful men, in the which the pure word of God is preached, and Sacraments be duly Ministred according to Christ's Ordinance, in all those things that of necessity are requisite to the same; as the Church of *Jerusalem*, *Alexandria*, and *Antioch*, hath erred, so also the Church of *Rome* hath erred, not only in their living, and manner of Ceremonies, but also in matter of Faith.

20. Of

20. *Of the Authority of the Church*

The Church hath power to decree 20. Article.
Rites, or Ceremonies, and Authority in
controversies of Faith; and yet it is
not lawful for the Church to ordain
any thing that is contrary to God's
word, neither may it so expound one
place of Scripture, that it be repug-
nant to another, wherefore although
the Church be a witness and keeper of
Holy writ, yet as it ought not to de-
cree any thing against the same, so be-
sides the same ought it not to inforce a-
ny thing to be believed for necessity of
Salvation.

21. *Of the Authority of General
Councils.*

General Councils may not be gather- 21. Article.
ed together without the commandment
and will of Princes, and when they
be gathered together (for as much as
they be an assembly of men, whereof
all be not governed with the Spirit and
word of God) they may err, and
some time have erred, even in things
pertaining unto God: wherefore things
E5 ordain-

ordained by them as necessary to Salvation, have neither strength nor authority, unless it may be declared, that they be taken out of Holy Scripture.

22. Of Purgatory.

22. *Article.* The Romish Doctrine concerning Purgatory, Pardons, Worshipping and Adoration, as well of Images as of Reliques, and also of Invocation of Saints, is a fond thing, vainly invented and grounded upon no warrant of Scripture, but rather repugnant to the word of God.

23. Of Ministering in the Congregation.

23. *Article.* It is not lawful for any man to take upon him the Office of publick preaching, or ministering the Sacraments in the Congregation, before he be lawfully called, and sent to execute the same. And those we ought to Judge lawfully called and sent, which be chosen and called to this work by men, who have publick Authority given unto them in the Congregation to call and send Ministers into the Lord's Vineyard.

24. Of

24. *Of speaking in the Congregation in such a Tongue as the people understand not.*

It is a thing plainly repugnant to the word of God, and the custome of the primitive Church, to have publick Prayers in the Church, or to Minister the Sacraments in a Tongue not understood of the people, 24. Article.

25. *Of the Sacraments.*

Sacraments ordained of Christ be not Badges or Tokens of Christians profession; but rather they be certain sure Witnessees and effectual Signs of Grace, and Gods good will toward us, by which he doth work invisibly in us, and not only quicken, but also strengthen, and confirm our Faith in him. There be two Sacraments ordained of Christ our Lord in the Gospel, that is to say Baptism and the Supper of the Lord; those five commonly called Sacraments, that is to say, Confirmation, Penance, Orders, Matrimony, and extreme Unction, are not to be counted for Sacraments of the Gospel, 25. Article.

Gospel, being such as have grown, partly of the corrupt following of the Apostles, partly as States of Life allowed in the Scriptures; but yet have not like nature of Sacraments, with Baptism and the Lord's Supper, for that they have not a visible sign or ceremony ordained of God; the Sacraments were not ordained of Christ to be gazed upon, or to be carried about, but that we should duly use them. And in such only, as worthily receive them, they have a wholesome effect or operation; but they that receive them unworthily, purchase to themselves damnation, as Saint Paul saith.

26. Of the Unworthiness of the Ministers, which hinder not the effect of the Sacraments.

26. Article.

Although in the visible Church, the evil be ever mingled with the good, and sometime the evil have chief Authority in the Ministration of the Word and Sacramentes; yet for as much as they doe not the same in their own Name, but in Christ's, and do Minister by his Commission and Authority, we may use their Ministering, both in hear-

hearing the Word of God, and in the receiving of the Sacraments: Neither is the effect of Christ's Ordinance, taken away by their wickedness, nor the grace of God's gifts diminished from such, as by Faith, and rightly do receive the Sacraments Ministred unto them, which are effectual, because of Christ's Institution and Promise, although they be Ministred by evil Men. Nevertheless, it appertaineth to the Discipline of the Church, that inquiry be made of evil Ministers, and that they be accused by those that have knowledge of their Offences; and finally, being found guilty, by just judgment be deposed.

27. Of Baptism.

Baptism is not only a sign of Profession, and mark of Defence, whereby Christian Men are discerned from others that be not Christned; but it is also a sign of Regeneration, or new Birth, whereby, as by an Instrument, they that receive Baptism rightly, are grafted into the Church; the Promises of the forgiveness of sin, and of our Adoption, to be the Sons of God by the

27. Article.

the Holy Ghost, are visibly signed and sealed, Faith is confirmed, and Grace increased, by virtue of Prayer unto God. The Baptism of Young Children, is in any wise to be retained in the Church, as most agreeable with the Institution of Christ.

28. *Of the Supper of the Lord.*

28. *Article.*

The Supper of the Lord, is not only a sign of the Love that Christians ought to have among themselves, one to another, but rather it is a Sacrament of our Redemption, by Christ's death. Inasmuch, that to such as worthily and with Faith, receive the same, the Bread which we break, is a partaking of the Body of Christ, and likewise the Cup of Blessing, is a partaking of the Blood of Christ. Transubstantiation (or the change of the substance of Bread and Wine, in the Supper of the Lord) cannot be proved by Holy Writ, but it is repugnant to the plain Words of Scripture, overthroweth the Nature of a Sacrament, and hath given occasion to many superstitions. The Body of Christ is given, and taken, and eaten in the Supper only after an Heavenly

venly and Spiritual manner, and the means, whereby the Body of Christ is received and eaten in the Supper, is Faith. The Sacraments of the Lord's Supper, were not by Christ's Ordinance reserved, carried about, lifted up or Worshipped.

29. *Of the wicked, which do not eat the Body and Blood of Christ, in the use of the Lord's Supper.*

The wicked, and such as be void of ^{29. Article.} a lively Faith, although they do carnally and visibly press with their Teeth (as *S. Augustine* saith) the Sacrament of the Body and Blood of Christ; yet in no wise are they partakers of Christ, but rather to their Condemnation do eat and drink the Sign or Sacrament of so great a thing.

30. *Of both kinds.*

The Cup of the Lord, is not to be ^{30. Article.} denied to the Lay-people, for both the parts of the Lord's Sacrament, by Christ's Ordinance and Commandment, ought to be Ministered to all Christian Men.

31. *Of*

*31. Of the one Oblation of Christ,
finished upon the Cross.*

31. Article. The offering of Christ once made, is that perfect Redemption, Propitiation and Satisfaction for all the sins of the whole World, both Original and Actual, and there is none other satisfaction for sin, but that alone; wherefore the Sacrifices of Masses, in the which it was commonly said, that the Priests did offer Christ for the Quick and the Dead, to have Remission of pain and guilt, were blasphemous Fables and dangerous deceits.

32. Of the Marriage of Priests.

32. Article. Bishops, Priests and Deacons, are not commanded by God's Law, either to vow the Estate of single Life, or to abstain from Marriage; therefore it is Lawfull also for them, as for all other Christian Men, to Marry at their own discretion, as they shall judge the same to serve better to godliness.

33. Of

33. *Of Excommunicate Persons,
how they are to be avoided.*

That Person, which by open De- 33. Article.
nunciation of the Church, is rightly
cut of from the Unity of the Church,
and Excommunicated, ought to be ta-
ken of the whole multitude of the
faithfull, as an Heathen and Publican,
untill he be openly reconciled by Pe-
nance, and received into the Church
by a Judge that hath Authority thereto.

34. *Of the Traditions of the Church.*

It is not necessary that Traditions 34. Article.
and Ceremonies, be in all places one or
utterly like, for at all times they have
been divers, and changed according to
the diversity of countries, times, and
mens manners, so that nothing be or-
dained against God's Word : who-
ever through his private judgment,
willingly and purposely, doth openly
break the Traditions and Ceremonies
of the Church, which be not Repug-
nant to the Word of God, and be or-
dained and approved by common Au-
thority, ought to be rebuked openly
(that

(that other may fear to doe the like) as he that offendeth against the common order of the Church, and woundeth the consciences of the weak Brethren: Every particular or National Church, hath Authority to Ordain, Change and Abolish Ceremonies, or Rights of the Church, Ordained onely by Man's Authority, so that all things be done to Edifying.

35. Of Homilies.

35. *Article.* The second Book of Homilies, the several Titles whereof we have joyned under this Article, doth contain a godly and wholesome Doctrine, and necessary for these times, as doth the former Book of Homilies, which were set forth in the time of *Edm. the sixth*; and therefore we judge them fit to be read in Churches by the Ministers, diligently and distinctly, that they may be understood of the People.

36. Of Consecration of Bishops and Ministers.

36. *Article.* The Book of Consecration of Archbishops and Bishops, and ordering of Priests,

Priests and Deacons, set forth in the time of *Edward* the sixth, and confirmed at the same time by Authority of Parliament, doth contain all things necessary to such Consecration and Ordering; neither hath it any thing that of it self is superstitious and ungodly. And therefore whosoever are Consecrated, or ordered according to the Rites of that Book, since the second Year of the aforementioned King *Edward* unto this time, or hereafter shall be Consecrated, or Ordered according to the same Rites, We decree all such to be Rightly, and Orderly, and Lawfully Consecrated and Ordered.

Note, that this last Article, by the *stat. 14. Car. 2.* is to be construed and taken to extend, and shall be applied unto the Book, containing the manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons, which is now set forth in such fort and manner, as the same did heretofore extend unto the Book set forth in the time of King *Edward* the sixth, mentioned in the said Article, *14. Car. 2. cap. 4.*

37. *Of the civil Magistrate.*37. *Article.*

The Queens Majesty hath the chief Power in this Realm of *England*, and other her Dominions, unto whom the chief Government of all Estates of this Realm, whether they be Ecclesiastical or Civil, in all causes doth appertain, and is not, nor ought to be subject to any foreign Jurisdiction. Where we attribute to the Queens Majesty, the chief Government, by which Titles we understand the minds of some slanderous Folks to be offended, we give not to our Princes the Ministering either of God's Word, or the Sacraments, the which thing the Injunctions also sometimes set forth by *Elizabeth*, our Queen, do most plainly testify. But that only Prerogative, which we see to have been given alwaies to all godly Princes in Holy Scriptures by God himself, that is, that they should rule all Estates and degrees, committed to their charge by God, whether they be Ecclesiastical, or Temporal, and restrain with the Civil Sword, the stubborn and evil doers. The Bishop of *Rome*, hath no Jurisdiction in this Realm

Realm of *England*. The Laws of the Realm, may punish Christian Men with death, for heinous and grievous Offences. It is Lawfull for Christian Men, at the Commandment of the Magistrate, to wear Weapons, and serve in the Wars.

38. *Of Christian Mens Goods,
which are not common.*

The Riches and Goods of Christians are not common, as touching the Right, Title and Possession of the same, as certain *Anabaptists* do falsely boast: Notwithstanding, every Man ought of such things as he possesseth, Liberally to give Alms to the Poor, according to his Ability. 38. Article.

39. *Of a Christian Man's Oath.*

As we confess, that vain and rash swearing is forbidden Christian Men by our Lord Jesus Christ, and *James* his Apostle; so we judge, that Christian Religion doth not prohibit, but that a Man may swear when the Magistrate requireth, in a cause of Faith and Charity, so it be done according to the 39. Article.

the Prophet's teaching, in Justice,
Judgment and Truth.

C H A P. IV.

*Several cases, touching the privileges of
Ministers, and Churches, and Church
Yards.*

*The punish-
ment for lay-
ing violent
Hands on a
Clergy-man.*

MAny are the privileges which the Laws of this Realm allow to Clergy Men in Holy Orders, some of which I shall insert in this Chapter: If one lay violent Hands upon the Person of any *infra sacros Ordines*, such Offender may be cited into the Spiritual Court, to have him Excommunicated, or doe Corporal Penance; But the party offending, if he think good, may redeem his Penance, for a certain sum of money to be paid to the party grieved, who may sue for the same in the Spiritual Court, if it be not paid, and no Prohibition will lie, *vide stat. Articuli Cleri*, 9 E. 3. cap. 3 and 4. & *Circumspecte Agatis*, 13 E. 1 Regist. f. 45. 49. 51, 52. 54. 57. Co. Institutes, 2 part, f. 492. and 620. 7 H. 3. Prohibition,

bition, 30. 5 H. 3. Prohibition, 29. 12.
H 7. f. 23. a. p. Butler, Co. Rep. 4. Lib.
f. 20. b. Bro. action sur Case, 15. F. N.
B. f. 51. R. 52. D. F. 53. A.

If one call a Minister Heretick, Schismatick, Fornicator, &c. or such other words, as are meerly Spiritual, in such case, he cannot sue in the Spiritual Court for damages, but he may cite the party offending, *pro salute anime*, and he must express in particular, the defamation in his Libel: and for the costs of suit recovered, he may sue in the same Court, if they be not paid, Co.

In what Court a Minister may sue for a scandal.

Inst. 2 part, f. 492, 493. F. N. B. 51, I. 52, M. 53. A. and see Tr. 25 Eliz. B. R. Palmer and Thorp's Case, Co. Rep. 4. Lib. f. 20. a.

A Minister is not bound to appear at the Sheriffe's Tourns, nor at Court Leets, by the Statute of Marlbridge, unless their appearance be especially required for some particular cause, and if they be distrained to come, they may have a Writ, reciting the said Statute, which Writ in the Register beginneth thus.

Ministers not bound to appear to Sheriffs Tourns or Leets, &c.

Cum de communi Consilio Provisum fit, quod viri Religiosi non habent necesse venire ad Tournum Vicecom, &c. Regist. f. 176 8 H. 4. f. 15. stat. Marlbridge, cap.

10. Co.

Parsons not
compellable
to appear at
Leets, by the
Common
Law.

10 Co. Inst. 2 part, f. 120, and 121.

By the Common Law also, Parsons of Churches, that had *curam animarum*, were not compellable to come to Tourns or Leets, and if they were distrained to come, they may have a Writ for their discharge in this Form: Rex, &c. *Cum secundum Consuetudinem Regni Nostri, Personæ Ecclesiasticæ, ratione Terrarum & Tenementorum suorum, Ecclesiis suis annexorum, venire non debeant ad Visum Franci Pleg. in curia nostra vel aliorum quorumcumque, &c. Regist f. 175. F. N. B. f. 160. C. Co. Inst. 2 part, f. 121.*

Men of the
Church, not
to be amerced
after the
quantity of
their Spiritu-
al Benefice.

No Man of the Church, shall be amerced after the quantity of his Spiritual Benefice, but after his Lay Tenement, and after the quantity of his Offence; and note, that the word *Beneficium* is a large word, and is taken for any Ecclesiastical Promotion, or Spiritual Living whatsoever: vide, *Magna Charta, cap. 14. and Co. Inst. 2 part, f. 29.*

Their Plough
Beasts not to
be distrained
&c.

The Plough Beasts of Religious Persons, or their Sheep shall not be distrained for the King's Debt, nor the Debt of any other Man, nor for any other cause, by any Bailiffs whatsoever, but

but untill such time as they can find another Distress or Chattels sufficient, whereof they may Levy the Debt, (except in case of damage Feasant) and such distress is also to be reasonable after the value of the Debt or demand, and by the Estimation of Neighbours, and not by Strangers, nor outrageous, *stat. de districtione Scaccarii, 51 H. 3. & vide dyer, f. 312. a. pl. 86.*

Spiritual Persons may make their Wills of such Corn as is sown upon the Glebe Land, at the time of their death, *28 H. 8 cap. 11. & vide 34 H. 6. 38.*

May make their Wills of Corn sown down.

No Man upon grievous forfeiture, is to Arrest any Minister in Church, or Church-Yard, whilst he is attending Divine Service, *50 E. 3 cap. 5. and by the 1 R. 2. if any offend herein, and be thereof duly Convict, he is to be Imprisoned, and Ransomed at the King's Will, and must make agreement with the party, 1 R. 2 cap. 15. & vide Boultstr. Rep. 2 part, f. 72, and Cro. Jac. f. 321. pl. 4. and Brow. Rep. 2 part, f. 301.*

The punishment for Arresting Ministers, doing Divine Service.

If a Clerk in Holy Orders be Convicted of any crime, for which the benefit of Clergy is allowable, upon producing

A Clergyman guilty of Felony, not to be burnt the Hand in

ducing his Orders, he shall not be burnt in the Hand, and if he have not his Orders, the Court *ex gratia*, may give him time to produce them; and if afterwards, he be Convicted again, he shall have his Clergy again, and so *ad Infinitum*, and though the party that may have benefit of his Clergy, must pray it, the Court not being bound to tender it *ex Officio*, yet the 22 E. 3 F. *Corone* 254. says, that if the Judge know him to be a Clerk, they will not give Judgment, though he pray not his Clergy, *vide*. 4 H. 7 cap. 13. and see *Searle and William's Case*, *Hob. Rep. f.* 288. and 294.

Ministers to
be excused
from paying
Toll, &c.

By the Register it appears, that Spiritual and Ecclesiastical Persons, are to be quit of and from the payment of Toll in Fairs and Markets, for the Goods and Merchandizes, which they buy to be spent on their Rectories, and Church Livings; and for such Goods and Merchandizes as are gotten on their Church Livings; and they are also to be quit of Murage, Pontage, and Pannage, and the like, and if they be troubled for payment thereof, they may have a Writ out of the Chancery, commanding the parties to desist, and

so an *Alis & Plures*, and then an Attachment, and the Form of the Writ *de essendi quietum de Toloneo*, runs thus, *Rex &c. Ballivis suis de B. salutem, cum Persona Ecclesiastica, secundum consuetudinem hactenus in Regno nostro usitatam & approbatam, ad Toloneum, Pannagium, & Muragium, de bonis suis Ecclesiasticis, alicubi in eodem Regno prestand. nullatenus teneantur, vobis precipimus, quod R. B. Personam de L. &c. vide Regist. f. 260. F. N. B. 227. F. & 228. A. & Co. 2 part, Inst. f. 4.*

And if a Clergy-man, who holdeth certain Lands and Tenements, by reason of his said Lands, ought to be chosen Bailiff, Beadle, or Reeve, or in such like Office for his Lands, and by reason thereof, shall be chosen into such Office; he may discharge himself by Writ out of the Chancery as followeth, *Rex &c. Ballivis de L. salutem cum secundum Legem, & consuetudinem Regni Nostri, Anglie, clerici infra sacros Ordines constituti ad Officium Ballivi eligi non debent nec hactenus consueverunt, ac jam ex parte, W. M. &c.* There is also the Form of a Writ, in F. N. B. to free them if they be distrained by the Sheriffs, or Collectors of

Clergy-men are not to be chosen into Temporal petty Offices.

Tenths or Fifteens, in their Spiritual Possessions, antiently belonging to their Churches, by their Goods there. Register f. 187, 188. F. N. B. 175, B. 176. A. Co. Inst. 2 part, f. 3. & 628.

They are not bound Personally to serve in War, &c.

Ecclesiastical Persons ought not in Person to serve in War, and in an action, brought against a Clergy-man, (wherein a *Capias* lieth) as in Trespass, Debt, Account, &c. If the Sheriff return, *quod clericus est Beneficiatus, nullum habens Laicum feodum*, in which he may be summoned, in this Case, the Plaintiff cannot have a *Capias* to the Sheriff, to take his Body, but he must have a Writ to the Bishop, to cause him to come and appear; but if the Sheriff return, *quod Clericus est nullum habens Laicum feodum*, then a *Capias* may be granted to the Sheriff, because it appears not by the return that he is *Beneficiatus*, so as he may be warned by the Bishop, so note the diversity, *vide* 18 E. 3. *proc.* 205. 9 E. 3. 30. 32 E. 3. *Process*, 58. 21 H. 6. 16. 34 E. 3. *scire fac.* 153. Co. Inst. 2. part, f.

A Clergy Man's Body not to be taken upon a Statute acknowledged.

If any Ecclesiastical Person acknowledge a Statute Merchant, or Statute Staple, or a Recognizance, in the Nature of a Statute Staple, his Body shall not

not be taken, by force of any Process thereupon, for the Writ runs, *Si Laicus sit*, and if he be bound in a Recognizance in the Chancery, or any other Court, &c. and pay not the sum at the day; by the Common Law, if he had nothing but Ecclesiastical Goods, the Recognizee could not have had a *Levari facias*, to the Sheriffs to Levye, but the Writ was to be directed to the Bishop of the Diocess, to Levye the same upon his Ecclesiastical Goods, but now by the Statute of *Westminster*, 2. cap. 18. the Recognizee may sue forth an *Elegit*, directed to the Sheriff, to have Execution of the Moiety of his Lands, and of all his Goods and Chattels, except his Beasts of his Plough, *Regist. f. 300. 16 E. 3. Process, 165. F. N. B. 266. A. B. Co. Inst. 2 part, f. 4.*

If any of the Parishioners do disturb their Parson, or Vicar, to carry his Tythes by the usual ways and passages, the Parson may sue in the Spiritual Court, for the disturbance; and if the other party sue a Prohibition upon the matter sued, a Consultation shall be granted, *F. N. B. 51 A.*

What Remedy Ministers have, if the way be stoppt where they should leade their Tythes

In

*Ministers.
may keep
what num-
ber of sheep
they ple se.*

In the 25 H. 8. There was a Statute made against the excessive number of Sheep, wherein there is a Proviso, that it might be Lawfull to all Spiritual Persons and every of them, to keep such and so many Sheep, upon their own Lands, as they might have done before the making of the said Act, 25 H. 8. cap. 13.

*The Privi-
ledge of the
Clergy and
their Ser-
vants in the
Convocation.*

Note, that the Clergy of the Kingdom, called to the Convocation by the King's Writ, and their Servants and Families shall have such privileges, in coming, tarrying, and going, as the great Men and Communality of this Realm, called to the King's Parliament do enjoy, 1 H. 6. cap. 1. Co. Inst. 4 part, f. 323.

*The punish-
ment for di-
sturbing Mi-
nisters.*

If any Person or Persons, of their own Power or Authority, do, or shall willingly and of purpose, by open and overt Word, Fact, Act, or Deed, maliciously or contemptuously molest, let, disturb, vex, or trouble, or by any other unlawfull ways and means, disquiet or misuse any Preacher or Preachers, Licensed, allowed, or Authorized to Preach, by any Archbishop, or Bishop of this Realm, or by any other Lawfull Ordinary, or by either of the

Chap.IV.

Manitor.

Universities, &c. or otherwise Lawfully Authorized or charged, by reason of his or their Cure, Benefice, or other Spiritual Promotion or Charge, in any of his or their open Sermon, Preaching or Collation, that he or they shall make, Declare, Preach, or Pronounce, in any Church, Chapel, Church-yard, or in any other place or places, used or appointed to be Preached in, or if any Person, &c. do maliciously, willingly, or of purpose, molest, let, disturb, vex, disquiet, or otherwise trouble any Parson, Vicar, Parish Priest, or Curate, &c. saying, doing, singing, Ministring, or Celebrating Divine Service, Sacraments, &c. that at any time after the said Statute shall be allowed, set forth, or Authorized, &c. The Offenders herein, upon Conviction before two Justices of the Peace, by two sufficient Witnesses, or their own Confession, may be committed by the said Justices, to the Gaol without Bail or mainprize for three Months, and after that, to the next Quarter Sessions; where if upon the appearance there they Repent, and be Reconciled, then to be discharged of Imprisonment, finding sufficient suerties for their good Behaviour for one

one whole year then next ensuing; and if they refuse to be reconciled and repent, then to be continued in the Gaol without Bail, &c. until they shall be reconciled and repent. 1 Mar. Sess. 2. cap. 3.

*The penalty
against such
as rescue di-
sturbors of
Ministers.*

If any person shall unlawfully rescue any Offender in the premisses aforesaid, or hinder the Offender or Offenders to be Arrested, such rescuer or disturber is to suffer Imprisonment as aforesaid, and forfeit five pounds to the Queens Majesty, her Heirs and Successors, and if the Town suffer such Offender to escape, and be lawfully presented for it, at the next Quarter-Sessions, then the Town forfeits five pounds in like manner; such Offenders as are punished in the Ecclesiastical Court, are not to be punished by the Justices, neither are such as be punished by the Justices to be troubled by the other Court. 1 Mar. Sess. 2. cap. 3.

*An Action of
false Impri-
sonment was
brought a-
gainst four
Justices of
Peace, by one
who had di-
sturbed a
Preacher and
adjudged it
did not lye*

Although this Statute was made in time of Popery, yet it is still in force as to the Offences before mentioned, for in the 10. year of King James, one Creswick brought an Action of false Imprisonment against four Justices of the Peace, and they justified the Imprisonment

ment upon this Statute, and set forth that the Plaintiff disturbed one *Robert Thompson* a Licensed Minister, and hindered his Preaching in the Church of _____ in the County of *York*, and so they committed the Plaintiff to Prison, and upon a Demurrer to this Plea it came to be argued, and was strongly debated several Terms, but at length in *Hill. Term 11 Jac.* Judgment was given against the Plaintiff *Creswick* by all the Judges. *Tr. 10 Jac. Rot. 1647. B. R. Creswick against Rookby & alium Bolst. Rep. 2. part. fo. 47, 48, 49, 50, 51, 52, 53.*

Also one *Cross* brought an Action of false Imprisonment against one *Stanhop* ^{The like case.} and other two Justices of Peace in the County of *York*, and they Justified the Imprisonment by reason of this Statute, *1 Mar. cap. 3.* for disturbing Preachers, and the Plaintiff demurred to their Plea, and upon argument it was adjudged against him. *Hill. 11. Jac. B. R. Cross and Stanhop's Case, Godbolts Rep. fo. 246. pl. 343.*

The Minister, Parson, or Vicar, is to ^{By whom the} chuse the Parish Clark, which said ^{Parish Clark is to be chosen.} choise is to be signified by the Minister, Vicar, or Parson to the Parishioners,

the next Sunday following, in the time of Divine Service, and the Clark is to be twenty years of Age, at least, and of honest Conversation, and sufficient for his Writing, Reading, and also for his competent Singing, (if it may be) which Clark so chosen shall receive their antient wages, without fraud or diminution, either from the Church-Wardens at the accustomed time, or by their own Collection according to the custom of the Parish. *Can. 91.* but if the Parish have a custom contrary to this Canon, then the custom is to be observed and not the Canon, as appears by several Cases in *Rolls Cases, 2 part. fo. 286.*

By whom
Church-
Wardens, &c
are to be
chosen.

All Church-Wardens, Questmen, Sidemen, or Assistants in every Parish are to be chosen by the joynt consent of the Minister and Parishioners if it may be, but if they cannot agree, then the Minister to chuse one, and the Parishioners another. *Can. 89. 90.* but where there is an antient custom in any Parish for the choise of Church-Wardens contrary to the Canon, in such case the custom is to be observed, for if the Parishioners of a Parish have used time out of mind to Elect one Church-

Church-Warden and the Vicar another, and afterwards a Canon is made, that the Vicar shall Elect two, and he doth so accordingly, and the Parishioners Elect one according to their Custome, and the Ordinary disallows him, and establisheth the other two, in this Case a Prohibition shall be granted, *P. 5 Jac. B. R. the Parishioners Case of Rowenden in Kent, Roll's Cases, 2 part, f. 287.*

A Prohibition was granted against *The like.* a Church-Warden, chosen by the Parson of *S. Magnus*, nigh *London-bridge*, by force of a Canon, upon a surmise that the Parish hath a Custom to choole two Church-Wardens, *Tr. 7 Car. 1. B. R. between Shirly and Brown, the like between Draper, and Stone, for Abchurch in London, P. 4 Car. 1. B. R. Rot. 420. Roll's Cases, 2 part, f. 287. the like against a Church-Warden, chosen by the Parson of Alhallows London, P. 17 Jac. B. R. Warner's Case, and P. 5 Jac. the Parishioners of Walbrook's Case, in London, Cro. Jac. f. 532. the like against a Church-Warden chosen by the Parson of S. Thomas in London, Tr. 15 Car. B. R. Evelyn's Case, Cro. Car. f. 551. and Jo. Rep. f. 493. the*

the same Case, and see also the Case of the Parishioners of *Esthelborough* in *London*, *Mar. Rep. p. 22. pl. 50. and pa. 67. pl. 104.*

The right of the Church and Church-yard, are in the Parson.

The Parson hath the right of the Church and Church yard in him; and if the Walls, Windows, or Doors of the Church be broken down, or the Trees in the Church-yard be cut down, or the Grass thereof be eaten up, the Parson, or Vicar, and not the Church-Wardens shall have an action for it, *Quare vi & armis domum & clausum fregit*, &c. 8 H. 6. f. 9. but for Ornaments in the Church, or Bells in the Steeple, or a seat in the Church taken away, the Parson here shall not have the action for such things, but the Church-Wardens must sue for them: and if the Coat of Armour, or Scutchions, or Pendants of Arms, that are hung in the Church or Chancel, in Honour of the party buried, or the Grave Stone laid over one, be taken away by the Parson, or any other, the Heir, or Executors of the party buried, shall sue for them, 9 E. 4. 14. a. *Lady Wyke* Case, *vide.* 10 H. 4. 9. 21 H. 7. 21. 11 H. 4. 12. 27 H. 3. Prohibition, 26. 31 H. 4. 12. F. N. B. 9 R. and see *Co. Inst. 3 part, f. 202. M.*

202. *M.* 10 *Jac. C. B. Corven and Pym's Case.*

If a Man buy a Bell, and hang it up in the Church Steeple, or make a Pew, and set it up in the Church, though he makes neither words nor writing thereof, yet by this, the Bell and Pew are so dedicated to the Church, that the party that did owe them, can never have them again, for if they should come to remove them, the Church-Wardens might sue them for it, 8 *H.* 7. 12. 10 *H.* 4. 9. & vide *Ritchin*, p. 277. a.

A Bell hung in the Steeple, or Pew set in the Church, cannot be removed by the party.

If the Organs be taken out of the Church, the Church-Wardens may have an action of Trespass for the same, for the Organs belong to the Parishioners, and not to the Parson; and therefore the Parson cannot sue such party in the Ecclesiastical Court that took them, *Tr.* 21 *Jac. B. R. per curiam*, *Roll's Cases*, 1 part, f. 393.

Church-Wardens to sue for Organs taken away.

All Trees growing in Church-yards, belong to the Ministers, but they are not to presume to cut them, or fell them down unadvisedly, but when the Chancell of the Church doth want necessary Reparations, and they are not to be converted to any other use, except the

Trees in the Church-Yard, belong to the Parson.

the Body of the Church doth need like repair, and my Lord Cook saith, *melio-rem conditionem Ecclesie facere potest praelatus deteriore nequaquam, vide stat. ne rectores prosternant arbores in Cæmeterio, 35 E. 1. Co. Rep. 11. Lib. f. 49. b. & vide M. 13 Jac. B. R. Bellamie's Case, Roll's Rep. 1 part, f. 255. pl. 23.*

No Fairs or
Markets so
be kept in
Church-
yards.

By the Statute of *Winchester*, it is provided, that neither Fairs nor Markets be kept in Church-yards, for the Honour of the Church, *stat. Winchester made at Westminster, 13 E. 1.* and he that doth keep any Fair or Market there, may be fined for it, *Lamb. 419.*

By whom
Churches are
to be repair-
ed.

And note, that the Body of the Church is to be repaired at the charge of the owners of Houses and Lands in the Parish, for that it is the place where Divine Service is Celebrated, and the Bodies of the Parishioners of the best sort and quality are buried, in respect whereof, the Law doth allow the Ecclesiastical Court to have Conusance thereof, and for the providing decent Ornaments for the Celebration of Divine Service, they are also to repair such publick Chapels, as are annexed to the Church, but not the private Chapel

Chapel of any though annexed to the Church, for that must be repaired by him that hath the proper use of it; for *qui sentit commodum sentire debet & onus, circumspicere agatis*, 13 E. I. Co. Inst. 2 part, f. 489. F. N. B. 50. N. Regist. f. 44. b. Brit. f. 11. & vide, M. 31, 32 Eliz. B. R. Jeffery, and Rensly, and Foster's Case, Co. Rep. 5. Lib. f. 66. and P. 41 Eliz. B. R. Paget and Crumpton's Case. Cro. Eliz. f. 659. pl. 5.

The Parishioners are also to repair the Inclosure of the Church-yard, because the Bodles of the common sort are buried there, and for the preservation of the Burials of those that were, or should have been whilst they lived the Temples of the Holy Ghost, and *Cæmeterium* is derived of the Greek word *κοιμω* that is *Dormio*, and therefore *Cæmeterium est quasi Dormitorium, quia mortui Dormire dicuntur usque ad Resurrectionem*. And also, if the Church-yard be not decently Inclosed, the Church which is *Domus Dei*, cannot decently be kept, and therefore this the Parishioners ought to do, *per consuetudinem notoriam & approbatam*, and the Consuance thereof is allowed by the 13 E. I. stat. *circumspicere agatis*

By whom the Church-yard is to be inclosed.

agatis, Co. Inst. 2 part, f. 489. Regist. 44. b. Brit. f. 11. & vide, Jeffery, and Rensly, and Foster's Case, M. 31, 32 Eliz. B. R. Co. Rep. 5 Lib. f. 66. and P. 41 Eliz. B. R. Paget's Case, there cited, f. 67. b.

*What things
are to be
provided by
the Church-
Wards.*

The Church-Wardens, or Questmen of every Parish, are at the Parish charge, to provide the great Bible, for every Church and Chapel, with the Book of Common-Prayer, and Books of Homilies, a Font of stone for publick Christning, with a decent Communion Table, which is to be covered in time of Divine Service, with a Carpet of Silk, or other decent stuff, and with a fair Linnen Cloth at the time of the Communion; and the ten Commandemens to be set upon the East end of the Church or Chapel, where the People may best see, and reade them, and other chosen sentences to be written upon the Walls of the said Churches and Chapels; and a decent Pulpit is also to be set in a convenient place therein, with a Chest for Alms, having a hole in the upper part thereof, and three Kayes, one to remain with the Parson, Vicar, or Curate, and the other two with the Church-

Church-Wardens : they are also to take care, that the Church Windows from time to time be well Glased, and that the Floors be kept paved plain and even without dust, or any noysome or unseemly thing ; and to take care that the Church-yard be sufficiently repaired and fenced with Walls, Rails, or Pales, according to the Custom, at their charges, who by Law ought to repair the same ; and they are also to see that the peace be well kept, at every meeting of the Congregation ; and that Persons Excommunicated, and so denounced, be kept out of the Church, and they are not to suffer any Plays, Feasts, Banquets, Suppers, Church-Ales, Drinkings, Temporal Courts or Leets, Lay-Juries, Musters, or any other prophane usage to be kept in the Church, Chapel, or Church-yard, nor the Bells to be rung superstitiously on Holy-days or Eves, abrogated by the Book of Common-Prayer ; and all those who have Authority to hold Ecclesiastical Visitations, shall either in Person, or by Substitute, survey the Churches of their Jurisdiction, once every three Years, to see if all things be in good repair, *Can.* 80, 81, 82, 83, 84, 85, 86, 88. If

The punishment for quarrelling or fighting in Church or Church-yard.

If any Person whatsoever, shall by words only Quarrel, Chide, or Brawl in any Church, or Church-yard, the Ordinary upon Proof of two Lawfull Witnesses, if he be a Lay-man, may suspend him *ab ingressu Ecclesie*, and if a Clergy Man, from the Ministration of his Office, for so long time as the Ordinary thinks meet, according to the fault; And if any Person or Persons whatsoever, shall smite, or lay violent Hands upon any other, either in any Church or Church-yard, then every Person so offending, shall (*ipso facto*) be deemed Excommunicate, and be excluded from the company of Christ's Congregation; And further, if any Person shall maliciously strike any, with any weapon, in any Church or Church-yard, or shall draw any weapon there, to the intent to strike another with the same weapon, every Person so offending, being Convicted by Verdict of Twelve Men, or by his own Confession, or by two Lawfull Witnesses, before Justices of Assize, Justices of Oyer and Terminer, or Justices of Peace, in their Sessions, shall loose one of his Ears, and if he have no Ears, then to be marked in the Cheek, with an

an hot Iron, with the Letter F. and
(*ipso facto*) be Excommunicate, 5 E. 6.
cap. 4 Co. Inst. 3 part, f. 176, 177.

An action of false Imprisonment, was brought against two Justices of the Peace, who pleaded that the Plaintiff was Excommunicate at the time of his action brought, and then because, *malitiose extraxit pugionem suum in quendam E. ea intentione ad percutiendum ipsum tam in Cemiterio Sancte Margarete, Virginis, infra clausum Cathedralis Ecclesie, Lincoln, quam in Cemiterio ejusdem Ecclesie, &c.* and was indicted for the same, And it was doubted by the Court, whether this Plea was good or no, and if the Plaintiff by the Statute aforesaid, shall immediately without any proof made, or tryal had, or sentence given, or proof of Witnesses before the Ordinary, by reason of the words (*ipso facto*) be deemed Excommunicate, P. 10 Eliz. Dyer's Reports, f. 275. b. pl. 48. Palmer and Mounson's Case, & vide Viner and Eaton's Case, Hetley's Rep. f. 86.

An action of false Imprisonment, brought by one Imprisoned for quarrelling in the Church-yard.

Many Indictments have been framed upon this Statute of 5 E. 6. *cap. 4.* but none of the Offenders have undergone.

Several Indictments for quarrelling in Church and Church-yards.

gone the punishment that I can find, for all the Indictments have been quashed for insufficiency of Forms, as may appear by the Cases following.

One *Perchal* was Indicted upon this Statute for drawing his dagger in the Church against *J. S.* without saying that he did draw it to the intent to stick the Plaintiff, and therefore the Indictment was holden void as to the Statute, and for the Assault also at Common-Law, because the Indictment concluded *contra formam Statuti*, *M. 32. El. B. R. Perchal's Case, Leo. Rep. 2. part fo. 188. pl. 234.* and see also *p. 33. Eliz. B. R.* an Indictment against one *Penballow*, quashed for the same Reason. *Cro. Eliz. fo. 231. pl. 23.*

An Indictment for fighting in the Church-yard.

An Indictment was also found against one *Desbick* upon this Statute for striking in *St. Pauls Church-yard*, and being by the Queens Patten created Garter-King of Arms, by the words *Creamus, Coronamus & Nomen imponimus de Garter Rex Heraldorum*, because he was not so named in the Indictment, being parcel of his Dignity and not of his Office, he was therefore discharged of the Indictment, *p. 23. Eliz. B. R. Desbicks Case, Cro. Eliz. fo. 224. pl. 7.*

A man was Indicted also upon this Statute, that in the Church-yard such a day *extraxit Gladium* against T. L. & *ipsum percussit*, and because the Statute is, if any person maliciously strike another, or shall draw any Weapon with an intent to strike any person, and the Indictment was *extraxit*, but does not say *ad percutiendum*, and because it was *quod percussit*, without saying *malitiose* the party was discharged. *Noyes Rep. fo. 171.*

And two Cholmleys *Jasper* and *John* being Indicted for assaulting Doctor *Higham* in *Ecclesia de Shoreditch predicta*, & *predicta. Johannem Higham ad tunc & ibid, &c. verberaverunt, vulneraverunt & maletráclaverunt contra formam Statuti, &c.* and upon this the Grand Jury finding *Billa vera* against *Jasper*, and *Ignoramus* against *John*; and *Jasper* pleading not guilty it was found against him, and it was moved in Arrest of Judgment, that the Indictment was not good, being *fecerunt*, and the Bill found onely against one, but this exception was not allowed, but another exception was taken because it was said in *Ecclesia de Shoreditch predicta*, and *Shoreditch* was not named before, and

and for this fault the Judgment was stayd. *Tr. 12. Car. 1. B. R. Cholmleys Case, Cro. Car. fo. 464. pl. 2.*

C H A P. V.

Some things necessary for Clergy-men to know concerning Presentations, Nomination, Deprivation, Resignation, &c. and of avoidance of Spiritual Livings by Death, Creation, Cession, Lapses, &c.

What Presentation is.

NOte, that Presentation is derived a *presentando*, quia *presentare nihil aliud est quam preste dare seu offerre*, &c. and this may be done as well by Word as by Writing, and if it be by Writing it is no Deed, but it is onely in Nature of a Letter to the Bishop; and this is the reason that the King himself may present by Word if the Ordinary be present. *Doderidge pa. 63. Co. Lit. fo. 120. a. 19. Eliz. 3. Quare Impedit, 60. Rolls Cases 2 part fo. 353. S. 1, 2, 3, 4. Cro. Jac. fo. 248. 3. E. 3. 3. & vide King and Emersons Case Tr. 8. Jac. C. B. Brownl. Rep. 1. part fo. 162.*

Presentations or Commendatorie Letters, are usually in this or the like Form. *Reverendissimo in Christo Patri,*

*The Form of
a Presentati-
on.*

& domino, R. permissione divina Eboracensis Archiepiscopo, Anglie Primati & Metropolitano, ejusve in absentia Vicario suo in rebus spiritualibus generali, T. S. Armiger verus & indubitatus patronus Ecclesie Parochialis de H. in Com. Ebor. salutem in domino sempiternam, ad Ecclesiam Parochialem de H. predictam vestre Dioecesis modo per mortem (vel Resignationem, Cessionem, Deprivationem, &c. as the Case is) T. R. vacantem, & ad meam presentationem pleno jure spectantem, dilectum meum in Christo W. C. clericum, in artibus Magistrum, paternitati vestre presento, (or commendando) humiliter supplicans, ut prefatum W. C. ad dictam Ecclesiam admittere, ipsumque Rectorem ejusdem Ecclesie instituere, & induci facere cum suis Juribus & pertinentiis universis, ceteraque omnia & singula peragere, & adimplere in hac parte que ad vestrum munus Episcopale pertinere videbuntur dignemini cum favore, in cuius rei Testimonium his presentibus sigillum meum apposui datum primo die Decembris; Anno Regni, &c.

Gene-

*Who may
make a Pre-
sentation.*

Generally, all Persons who have ability to grant or purchase, have ability to present unto any Benefice with cure of Souls. Yea, an Infant under the Age of 21 Years, may present in his own Name and Right; and if he do not present within six Months, the Church shall Lapse to the Bishop, but a Feme Covert cannot present by her self, but her Husband shall present either in his own Name, or else in both their Names together; but the Queen of *England*, is as a Feme Sole, and may present to any Church, without the King, also, Men Outlaw'd or Excommunicate, &c. may present, and their presentments shall stand good, till they be avoided by *Plea*, 9 H. 6. 5. 17 E. 3. 9. 3 H. 7. 14. *Hughe's cap.* 22.

*One may
have the
Presentation,
and another
the Nomina-
tion to a Li-
ving.*

And note, that one may have the Presentation, and another the Nomination to a Living; and so they may be Divers distinct Inheritances: As if I being seized of an Advowson in fee do grant to B. and his Heirs, that he and his Heirs every time the Church becometh void, shall Nominate to me a Person to be presented to the same Church, which Person so Nominated, I or my Heirs shall present to the Ordinary

nary of the place, to be admitted accordingly into the Church. And it hath been a question in this Case, who shall be said to be Patron of the Church, some think he that hath the Nomination, and that he that ought to present, is only as servant to him that hath the Nomination, *vide*, 24 E. 3. 70. 14 H. 4. 11. a. 1 H. 5. 2. F. N. B. 33 B. Doder, p. 65. Plo. Com. 157.

And therefore, in the 14 E. 4. 2. b. *Where one hath the Presentation, and another the Nomination, who shall be Patron.* the Justices distinguished, that if one be seized of an Advowson, and granteth to I. S. and his Heirs to Nominate at every avoidance, to him and his Heirs, a Person to be presented to the same Church, which Person so Nominated, shall be by him or his Heirs, presented to the Ordinary; that in this Case, he to whom the Nomination is so granted, shall be Patron. But if I grant to I. S. that at every avoidance, he shall Nominate to me two Clerks, of which I shall present one to the Bishop, in this Case I remain Patron, because the Election is in me, which of the parties named shall be presented, and have the Benefice, *Doder. pa. 65. 14 E. 4. 2. b. Smith and Clayton's Case, 32 H. 8. 48.*

G

And

Where a Title of Presentation accrues to the King, it shall prejudice the Nominator.

And if one have the Nomination, and another the Presentation; if such Right of Presentation accrue to the King, this shall not prejudice the Inheritance of him that hath the Nomination, but he shall Nominate to the Chancellor still, who in the name of the King, shall present to the Ordinary, and if the King present without any such Nomination, the Nominator shall bring his *Quare Impedit* against the Incumbent only, because the King cannot be termed an Usurper, *Doder. pa. 69.*

Where an Incumbent is made Bishop, the King shall present.

If the King create a common Person, who is Incumbent on a Living Bishop, then the King shall have the Presentation of that Living *bac vicar* and not the Patron, though the Law formerly hath been otherwise taken, and if a Church be void, to which the Bishop hath Title to present as Patron in respect of his Temporalties, if he dye before Presentment, the King shall have the Presentation, by reason of the Temporalties, and not the Executors of the Bishop; and so in like case if the Church become void after the Bishop's Death, and before the seizure of the Temporalties, yet the King shall have

have the Presentment, 50 E. 3. 26. 9
 H. 6. 16. *b. admit.* 24 E. 3. 26. *b.* 12
 E. 3. *Quare Impedit*, 56. 21 E. 3. 6. *b.*
 29 E. 3. 44. 24 E. 3. 30. adjudg. *Roll's*
Cases, 2 *part*, *f.* 343. C. 3, 4 D. 5.
 345 E. 4. & 366 Z. 2. & *vide* P. 37
Eliz. Rot. 1427. *Wright's Case*, M.
Rep. f. 399. *pl.* 522. and see *Cro.*
Jac. f. 692.

If the Church of the Patronage of a
 Bishop, Abbot, or Prior be void, and the
 Bishop, &c. present, and after dye be-
 fore Institution, the King by his Prero-
 gative may present to the said Church,
 and if the Bishop live till Institution,
 and dye before Induction, in this case
 also the King may present by his Pre-
 rogative, *Liber. Par.* 21 E. 1. the Prior
 of *Bermundsie's Case*, adjudged in
 Parliament, *F. N. B.* 34 K. 38 E. 3, 4.
Roll's Cases, 2 *part*, *f.* 345 E. 6. & *vide*
Savill's Rep. f. 119.

*In what Ca-
 ses the King
 may present,
 where a Bi-
 shop is Pa-
 tron.*

Although the King by his Preroga-
 tive shall have the presentment where
 the Incumbent is made Bishop, yet if
 the King grant to the said Incumbent,
 before he is created Bishop, a dispen-
 sation to retain the said Benefice with
 his Bishoprick, and afterwards he is
 created Bishop, and dies Incumbent:

*Where a Bi-
 shop holds a
 Living in
 Commen-
 dam, the Pa-
 tron shall
 present after
 his Death.*

in this Case the King shall not then present by his Prerogative, but the Patron shall present, because the Church is not void by reason of being made Bishop, but by death of the Incumbent, in which the Prerogative hath no place. *Co. Entr.* 474. *Hele's Case*, *Roll's Cases* 2 part f. 343. *D. 2.* or if the Bishop resign his Living it is the same, *vide p. 6. Eliz.* C. B. *Sir Henry Sydeny's Case*, *Dyer* f. 228. pl. 48. *Hob. Rep.* f. 157. and p. 19. *Car. 1.* C. B. *Edes and Bishop of Hereford's Case*, *Vaugh. Rep.* f. 18.

A Composition to present, not binding to the King.

If during the vacancy of the Archbishop of York, and his Temporalities being in the King's hands, the Deanry become void, the King shall present to it, although that by Composition between the Arch-Bishop and the Chapter; the Chapter is to chuse one of Right, the Patronage belonging to the Arch-Bishop; and the composition shall not binde the King who comes in paramount as supream Patron. 17 E. 3. 40. adjudg. *Roll's Cases*, 2 part f. 343. C. 6.

What shall serve for a turn.

If two men have Title to present by Turn, and one of them presents and his Clerk is Admitted, Instituted, &c. and

and afterwards he is deprived for Crime or Heresie, or other cause, yet he shall not present again, but this shall serve for his turn; so if he be meer *Laiens* or Illiterate who is presented, admitted and Instituted, &c. although it be declared by Sentence that he was Incapable *ab Initio*, yet because the Church was full till Sentence declaratory came, he being Parson *de facto*, although this deprivation relate to some purposes, yet it shall serve for his turn, *Co. Rep. 6. Lib. f. 102. a. Roll's Cases, 2 part, f. 347 K. 2, 3, 348 L. 6. 7 Hob. Rep. f. 148. 149. & vide M. 12. 13 Eliz. Dyer, f. 292. b.*

If two Men present by turn, and the first presents his Clerk, who is Admitted, Instituted and Inducted, and afterwards the Church becomes void, then the other presents in his turn, whose Clerk is also admitted, &c. and afterwards deprived, after which, the the Bishop without giving notice Collates, he who ought to have this turn, and might remove the Bishop's Clerk, grants away the Advowson, then the Bishop's Clerk dies, in this Case, the Grantee of the Advowson cannot present this turn, for the Collation of the

Where a turn shall be lost.

G 3

Bishop

Bishop hath prevented him, although it were without notice, and so Tortious, and though the granter might have outed the Bishop's Clerk, by a *Quare Impedit*, yet it is but a thing in action, and when he hath granted the Advowson over, the Grantee cannot have this thing in action, nor the granter cannot have it, so as none can now have it, but it shall serve for a Presentation as in his turn for this time, and the other, whose Clerk was deprived, shall present again; *M. 42, 43 Eliz. C. B. Leak*, and Bishop of Coventry, and Babington's Case, *Cro. Eliz. f. 811 pl. 17.*

Where two
having
right, they
ought to joyn
in a *Quare
Impedit.*

And if two have right to present, and the Church becomes void, and then one of them releaseth to the other, this release is void, and they ought to joyn in a *Quare Impedit*, *M. 30, 31 Eliz. C. B. Brookesby*, and *Wickham*, and Bishop of Lincoln's Case, *Leon. Rep. 1 part, f. 167. pl. 237.*

Grantees of
Copartners,
are in like
case as they
who granted,
&c.

If two Copartners be of an Advowson, and they severally grant their parts to two several Men, the advantage that was between the Partners, doth hold place between the Grantees, so that the first presentment shall go to the Grantee of the Eldest, and the next

to the other, and an Usurpation of the one shall not put the other out of Possession ; but if they were meer Tenants in Common, and did not derive their Estates from Copartners, the Book saith, perhaps it might be otherwise, *P. 25 Eliz. C. B. Harris and Hays, against Nichols, Cro. Eliz. f. 18 pl. 6.*

*What shall
serve for a
turn.*

A. who hath one turn presents *B.* who is Admitted, Instituted and Inducted, and afterwards is deprived by sentence, upon which *C.* who hath the second turn, presents *D.* who is admitted, &c. and afterward he is deprived also, and the first sentence is repealed, and *B.* is restored to the Living again ; and afterwards *D.* the second Incumbent dyes, and then after that, *B.* dyes also, hereupon *C.* presents again as in his turn, for though his Presentee were Parson for the time to all purposes, during the deprivation of *B.* yet when the second sentence comes, and *B.* is restored, then he is Incumbent, by virtue of his first Presentation, Institution and Induction, and needs no new Institution, and so after his Death, *C.* may present again as in his turn, but if *B.* had dyed before he had been restored, or had not reversed the sentence of deprivation a-

gainst him, then it had been otherwise, and C. should not have presented again as in his turn, *P. 41 Eliz. B. R. Rot. 513. Windsor, and Archbishop of Canterbury, and Fletcher's Case, Co. Rep. 5 Lib. f. 102. and see Cro. Eliz. f. 686. pl. 22. Roll's Cases, 2 part, f. 347 K. 4. 5. & M. Rep. f. 558. pl. 760.*

When Admission, &c. is void, it serves not for a turn.

But when the Admission and Institution are merely void, then without question it shall not serve for one turn, as if the Presentee have Institution and Induction, but did not Subscribe to the Articles of Religion, according to the Statute of 13 *Eliz.* by which the Admission, Institution and Induction are void; this shall not serve for a turn, because the Admission, Institution and Induction are merely void by the Statute, *Co. Rep. 5 part, f. 102 b. Roll's Cases, 2 part, f. 347 K. 6.* and if a Woman be Presented, Instituted and Inducted, this is a meer Nullity, because her Incapacity is apparent, *Roll's Cases, 2 part, f. 348 L. 8. Hob. Rep. f. 149.*

Three Grantees, two of them may present the third.

If a grant of the next avoidance be made to three, and afterwards the Church becomes void, and two of the three present the third Grantee being a Clerk

Clerk, this is a good presentment, and the Bishop ought not to refuse him, although all the three were joyntenants of it by grant, and only two of them joyn in the presentment, because the third Person cannot present himself, but if one of the three only had presented the third Person, the Bishop might peradventure, have refused him; as it is said in *Dyer, f. 304. b. 14 H. 8. 2. 21 Eliz. 4. 66. a.* but in *Moore* it is held and adjudged, that if one of them had presented the third Person, it is good enough, *Tr. 31 H. 8 Rot. 348 Sr. Godfrey Foliam's Case, M. Rep. f. 4. pl. 14. and Bendl. Rep. f. 34*

Where a Church is Presentative, the Church is full by Admission and Institution against any Common Person, but not against the King, unless the Clerk be Inducted, and that is the reason that regularly, Plenarty shall be tryed by the Bishop, because the Church is full by Institution, which is a Spiritual Act, but void or not void, shall be tryed by the Common Law, 24 E. 3. 30. 25 E. 3. 47. 38 E. 3. 9. 9 H. 6. 31. 22 H. 6. 27 Co. Lit. f. 119 b. 344. a. Roll's Rep. 1 part, f. 191 Co. Rep. 6 Lib. f. 49. a.

Institution makes the Church full against all Persons, but the King.

*A Man may
vary from
his first Pre-
sentation.*

If a Man present his Clerk to the Bishop, yet he may present another before the Bishop hath received the first, and the Bishop may admit which of them he pleaseth, but where an Incumbent of a Church is deprivable, yet the Patron nor the King himself cannot present before the party be deprived, because the Church is not void till then, 38 E. 3. 36 *b.* Roll's Cases, 2 part, f. 349 O. 2 P. 1, 2. & 353 T. 5. 14 E. 3, 2 *b.*

*Institution
makes the
Church full.*

If I. S. present his Clerk, who is Admitted and Instituted, by this the Church is full against a Common Person, for by the Institution he hath *curam animarum*, but if the King have right to present, it is not full against him before Induction of the Presentee; but if the King have no right to the Church, then it shall be full against him also by Admission and Institution, P. 13 Jac. Hitching and Glover's Case, Roll's Rep. 1 part, f. 191. and 227 Cro. Jac. f. 463 pl. 11. & vide, M. 4, 5 Eliz. Dyer. f. 217 *b.* pl. 62. 22 H. 6. 27. a. 38 E. 3, 4 Co. Rep. 4 Lib. f. 79. a. 6 Lib. f. 49. a. 11 H. 4. 9. Davis Rep. f. 82. Roll's Cases, 2 part, f. 349 Q. 1, 2, 3. 33 H. 6. 24. 21 E. 4. 34 *b.*

When

Presentment
by Usurpation,
where it
binds the
King.

When a Man Usurps upon the King, and his Clerk is Instituted and Inducted, although by this the Patronage is not out of the King, but the King may remove the Incumbent by a *Quare Impedit*, though there have been a double and treble Usurpation, yet till the Incumbent be removed, who is Parson *de facto*, though not *de jure*, the Church is full against the King, so that he cannot present any other to the Church during this time, for by the Usurpation, the presentment *hac vice* is out of the King, neither can the King before the Clerk be removed, present the same Clerk who is in by Usurpation, for it cannot enure as a surrender or new presentment, and so are all the Books which seem to differ in this point to be intended, as 4 E. 3 *Quare Impedit*, 33. 18 E. 3. 16. 43 E. 3. 14. 47 E. 4. 1. H. 7. 19 Bro. *Quare Impedit*, 39 Dyer, f. 351. a. for thus it was adjudged in point, as my Lord Cook reports it, in P. 25 Eliz. C. B. Pescod and Yardlie's Case, Co. Rep. 6 Lib. f. 30. a. M. Rep. f. 338 pl. 457. & Rep. 1 part, f. 81 pl. 147. and Owen's Rep. f. 43. the same Case, vide, P. 13 Jac. B. R. the King against the Bishop of Norwich,
Cole

Cole and Saker, Cro. Jac. f. 385 pl. 16.
and Roll's Rep. 1 part, f. 235. pl. 7 Co.
Lit. f. 344 b. Tr. 4 Jac. B. R. the King
and Champion's Case, Cro. Jac. f. 123
pl. 8. Godbolt's Rep. f. 263. pl. 362 Co.
2 part, Inst. f. 358. Roll's Cases, 2 part,
f. 349 Q. 4, 5. & 372 I. 8 Co. Rep. 6
Lib. f. 49 b. in fine.

After reco-
very in a
Quare Im-
pedit, the
Patron may
present with-
out removal.

If one recover in a *Quare Impedit* against an Incumbent, the Incumbent is so removed by the judgment upon the *Quare Impedit*, that the Recoverer may present to the Church, without any other removing of the Incumbent, although he continue Incumbent *de facto*, till the Recoverer do present; but a stranger to the recovery cannot present till the Incumbent be removed, note the diversity *M. 12 Jac. B. R. Whistler and Singleton's Ca. Ro. Rep. 1 part, f. 62 pl. 6. and see f. 213. and M. 13 Jac. Fairbank and Durham's Ca. f. 242 H. 14 Eliz. B. R. Bennet and Edward's Ca. M. Rep. f. 571 pl. 784. Boult. Rep. 3 part, f. 38. and Roll's Cases, 2 part, f. 350.*

Collation be
Lapsed without
good Title,
puts not the
Patron out of
Possession.

If the Bishop Collate without good Title of Lapse, this doth not put the Patron out of Possession, but he may present afterwards, although the Bishop's

shop's Clerk be Inducted, for it shall be taken only to be provisionally made for Celebration of Divine Service, untill the Patron do present, but such an Usurpation by Collation shall take away the right of Collation that is in another Bishop, so that he cannot present till the Incumbent be removed, 17 Eliz. 3. 64 Co. Lis. f. 344 b. 30 Eliz. B. R. *Jorden's Case*.

A Bishop Collates without good Title, either of Lapse or otherwise, and afterwards the Patron dies, and then the six Months pass, and the Executors bring a *Quare Impedit*, by virtue of the stat. 4 E. 3 cap. 5. and the Bishop and Incumbent plead Plenarty for six Months, and upon demurrer, this was adjudged no Plea, because such Collation is no Plenarty, being Tortious, *M. 32, 33 Eliz. C. B. Smalwood*, and other Executors of Sale, against the Bishop of *Coventry and Litchfield*, *Cro. Eliz. f. 207 pl. 1. Roll's Cases, 2 part. f. 350.*

If the King present *ratione Lapsus*, where like King is deceived in his Presentment, it puts not the Patron out of Possession, &c. where he hath no Title to present by Lapse or otherwise, and upon this, the Ordinary Admits, Institutes and Inducts the Clerk, yet this does not put the

the right Patron to his *Quare Impedit*, but he may present, for the Presentment was void, the King being deceived, and so the Institution and Induction without any Presentment; and if the King present *natione Lapsus*, where he hath Title, *pleno jure*, and so mistakes his Title; in this Case, although the Clerk be Instituted and Inducted, yet this doth not put the King to his *Quare Impedit*, for the Presentment is void, and so the King is not out of Possession, but may present before removal of such Clerk. Also if the King repeal his Presentation before Induction of the Clerk, and give notice thereof to the Ordinary, who notwithstanding afterwards Institutes and Inducts him; yet the King may present another, for the Church is not full, because it is no Presentation; and in such Cases, where the King repeals his Presentation, though he give no notice to the Ordinary, yet if the Ordinary after such repeal Institutes and Inducts, it is void; and if the King presents A. and upon refusal of him, brings a *Quare Impedit*, and pending the same, B. procures a Presentment of the King for himself in deceit of the King, and upon

upon this, is Instituted and Inducted by the Ordinary, yet this doth not put the King out of Possession, because the Presentment is void, and so the King may present before the removal of B. by *Quare Impedit*; if a Man present in time of War, and the Presentee is Instituted and Inducted in time of Peace, this doth not put the Patron to his *Quare Impedit*, but he may present, for this is but as an Institution and Induction without a Presentation, *Roll's Cases*, 2 part, f. 350. in fine, 351. 353 S. 6 T. 1. 354 U. 3. 5. *Co. Rep.* 6 Lib. f. 29 b. 25 *Eliz.* 3. 47 *Dyer*, f. 292. a. pl. 70. & 330 b. *Vaugh. Rep.* f. 14. *Roll's Rep.* 1 part, f. 236. *F. N. B.* 34 C. 271 D. *Co. Lit.* f. 344 b. & vide, M. 15, 16 *Eliz. Waller and Scott's Case*, *And: Rep.* 1 part, f. 38 pl. 99.

It is said in *Co. 9 Rep.* and admitted in *Dyer*, 360. that if the Presentee of the King dye after Institution and before Induction, yet in this Case the King may present again, because he had not the effect of his Presentation, *Co. Rep.* 9 Lib. f. 132. and *Dyer*, f. 360. b. pl. 7 vide *Roll's Cases*, 2 part, f. 353 T. 3354 U. 4 Tr. 32 *Eliz. C. B. Wright*, and the Bishop of *Normich Case*, *Leon. Rep.* 1 part, f. 156 pl. 218.

If the King's Presentee dye before Induction, he may present again.

If

What is a
Revocation
of the King's
Presentation.

If the King present to a Benefice, and dye before his Clerk is Admitted and Instituted, the Presentation is revoked in Law by his Death; and if the King first present one Man, and then another without any Revocation of the first, or mention made of it, yet this is a Revocation in Law of the first Presentation, if the second be not obtained by fraud in deceit of the King pending a *Quare Impedit*, M. 8 Jac. in *Secar. inter Calvert and Kitchin*, Roll's Cases, 2 part, f. 354 U. 1. 2, 3 M. 8 Jac. C. B. Waller's Case, Godb. Rep. p. 179 pl. 25 Co. Rep. 6 Lib. f. 29 b. & vide M. 15, & 16 Eliz. 372 b. & H. 17 Eliz. Dyer, 339 b. pl. 47.

Death of a
Patron, no
Revocation
of his Presen-
tation.

But if a Common Person present, and dye before Institution, this is no Revocation in Law of the Presentation, but it remains still in its force, and if the Executors, after the Testator's Death, should present another, yet the Bishop is not chargeable to admit any other, but him that was first presented, *Savil's Rep.* f. 95. 44 *Eliz.* 3. 30. Roll's Cases, 2 part, f. 354 U. 6.

Where Usur-
pation shall
prejudice the
King.

If the King have Title to present *ratione Lapsus*, and the Patron usurps upon him, and presents one who is admitted

admitted, &c. and dyeth, in this Case the King hath lost his Presentation, for he having the first Presentation he shall not have the second, for otherwise the King may suffer Strangers to present one after another, and take his turn when he pleaseth, and by that means, the Patron shall in a manner be disinherited, and the Statute *Prærogativa Regis, nullum tempus occurrit Regi*, is to be intended where the King hath a permanent Title, and not Transitory, when time is the substance of his Title, 27 *Eliz. Biskervil's Case, Co. Rep. 7 Lib. f. 28. Owen's Rep. f. 3. 89. 90 Crö. Eliz. f. 790.*

And where it is said in my Lord *Hobbar's* Reports to be his Opinion, ^{Where the King shall lose his Presentation} that if a Church Lapse to the King, yet if the Patron presents before the King take the advantage of the Lapse, the King shall not then have the advantage thereof, for he saith it is not fully within the Rule *Nullum tempus occurrit Regi*, for the Patron's Title continues till the Lapse Executed, *Hob. Rep. f. 152*, but this I suppose is to be intended where the Presentee of the Patron by Usurpation upon the King, dyes before the King present, as it is in the Case

Cafe before, for otherwise there are Divers Authorities against my Lord Hobarts Opinion, 27 E. 3. 84 b. Roll's Cases, 2 part, 368 B. 2, 3, 4 Tr. 10 Eliz. Dyer, f. 277. pl. 55. Co. Rep. 7 Lib. f. 28. & H. 6 Jac. B. R. Cumber, and the Bishop of Chichester's Case, Cro. Jac. f. 216, & vide Beverly, and the Archbishop of Canterbury and Cornwall's Case, Cro. Eliz. f. 44. Owen's Rep. f. 2. Gold. Rep. pa. 44 pl. 25. Savil's Rep. f. 89 pl. 166. Ander. Rep. 1 part, f. 148 pl. 196. Leon. Rep. 1 part, f. 63 pl. 84. & 226 pl. 307. Roll's Cases, 2 part, f. 351. and Bishop of Lincoln's Case, Owen's Rep. f. 5. 89, & 90.

An Ecclesiastical Patron cannot vary from his Presentation.

An Ecclesiastical Patron cannot vary from his presentment. *quia presentatio à Clerico Patrono facta vim habet Electionis, & eligens indignum privatur ipso jure*, 31 Eliz. 1 Quare Impedit, 185. neither can a Common Lay Patron by our Law revoke his Presentation, H. 18 Eliz. Dyer f. 348. a. Roll's Cases, 2 part, f. 354.

If the Chancellor present when he ought not, the King may repeal it.

If the Chancellor present to a Benefice, supposing it to be under value when it is not, and hereupon the Presentee is Admitted and Instituted, and before Induction the King being made acquainted

acquainted with it, repeals the said Presentation, and presents one in his own Name, this is a good repeal, for that it appears to the King he had a right precedent, and was deceived in the first grant, *Roll's Cases, 2 part, f. 353 T. 4.*

If a Miscreant or Schismatick be presented, Admitted, and Instituted, and Inducted, it is a good cause of deprivation, *5 R. 2 Tit. Tryal, 54.* so if he be Irreligious, he may be refused, as it is said in the *5 H. 7. 6.* but where he is charged with one, or refused for another, it ought to be alledged in particular what the cause is, so that the party may answer to it, as in the *5 H. 7. 19. 11. H. 7. 7. & 27.* as that the Presentee is a Villain, Bastard, under age, not *infra sacros Ordines*, or Illiterate, &c. or as in the *15 H. 7. 7 b.* that the Patron had been Excommunicate for forty days, and therefore his Presentee ought not to be admitted, or that the Presentee had committed *homicide*, as it is held in the *38 E. 3. 2.* or that the Presentee is Out-law'd, for then he is not *Idonea Persona*, or one who is meer *Laicus*, *M. 12, 13 Eliz. Dyer, f. 292 b.* in a *Quare Impedit* if the Bishop return that at the time of the Presentation,

What are good causes of deprivation.

sentation, the Presentee was a common haunter of Taverns and other places, and a player at unlawfull and prohibited Games, *ob quod & diversa alia crimina le dis Presentee fuit criminofus & non Idoneus*, it was adjudged, that these particular defects did not make the Presentee *criminofus*, because they are not *mala in se*, but *mala prohibita*, and the other words, *quod ob diversa alia crimina*, he was *criminofus*, & *non Idoneus*, were too general and uncertain, *vide H. 32 Eliz. B. R. in Specot's Case, Co. Rep. 5 Lib. f. 58. a. Leon. Rep. 3 part, f. 198 pl. 251. An. Rep 1 part, f. 189. pl. 225 Roll's Cases, 2 part, f. 355 l. 1 Z. 1* if a Parson be convicted of *Homicide*, it is good cause of deprivation, *T. 15 Jac. B. R. Searl's Case, Cro. Jac. f. 430 pl. 10 Hob. Rep. f. 121. Hugbgr. Abr. 1 part. f. 633 Ca. 3. 634 Ca. 5. 635 Ca. 12.*

Causes of deprivation are good causes of refusal of a Presentee.

All such causes as are sufficient causes to deprive an Incumbent, are sufficient to refuse a Presentee; it is no cause to refuse a Presentee because he hath another Benefice, for that is at his own Peril, and peradventure the second Benefice is better than the first, and the first shall be only void, and therefore it would be mischievous to the Presentee

if he should be refused for that cause, if the Bishop once refuse the Presentee, he cannot afterwards accept him, P. 26 Eliz. C. B. Bishop of Hereford's Case, Cra. Eliz. f. 27 pl. 10. & vide Co. Rep. 5 Lib. f. 58. b. 14 H. 7. 28. b. Roll's Case, 2 part, f. 355 Z. 2, 3.

A Church being void, upon the *stat. 21 H. 8.* for taking a second Benefice of eight pounds value without qualification, the Patron thereupon grants to one, *primam & proximam ad-vocationem dicte Ecclesie, cum primo & proximo vacare contigerit*, by virtue whereof the Grantee presents to the said Church, and being disturbed, brought his *Quare Impedit*, and it was holden that the present avoidance did not pass by the said grant, for the avoidance being before the said grant it cannot be said to be *prima & proxima post donum & concess. predict.*, &c. P. 2, 3. P. M. Agard, and the Bishop of Peterborough, and Denton's Case, Dyer, f. 129. b. & vide, P. 11 Eliz. Dyer, f. 283. a. 28 H. 8. 26. b.

What shall pass by a grant, of proximam ad-vocationem.

It is good cause of refusal of a Presentee, for that he is *Simoniacus*, in the same Presentment to wit hath made a corrupt contract to be presented, or that he

Simony, good cause of deprivation.

he is *Simoniacus* to another Benefice, besides this he is presented to, also if a Parson doe or suffer Dilapidations, he is deprivable. Bishop of *Salisbury's* Case, 12 *Jac. B. R. Godb. Rep. pa. 259 pl. 357 Tr. 16 Jac. Bonghton*, and the Bishop of *Rochester's* Case, *Roll's Cases, 2 part, f. 356.*

Where the
Ordinary
shall be no
disturber.

If the Ordinary Admit and Institute the Presentee of the Chancellor, and command the Archdeacon to Induct him, and afterwards before Induction the King sends an Inhibition, reciting that the Church is above the value of forty pounds *per. ann.* and belongs not to the Chancellor to present, and commands the Ordinary to receive *A. B.* his Clerk whom he presents; in this Case, if the Ordinary do not command the Archdeacon not to proceed in the Induction, but suffers the same to be done a Month afterwards, yet he shall not be adjudged a disturber, for there is no default in him; but if the Inhibition had come to the Ordinary before the Warrant made to the Archdeacon, if he had made the Warrant afterwards, by which he has been Inducted, then he should be a disturber, 38 *E. 3. 3, & 4. Roll's Cases, 2 part, f. 356 A. 1, 2.*

If the Archbishop Visit his Inferior Bishop, and Inhibits him, during the Visitation, to execute any Jurisdiction, if the Bishop have Title to Collate to a Benefice within his Diocese by Lapse, yet he cannot during the Inhibition Institute his Clerk, but must present him to the Archbishop, and he shall Institute him; because during the Inhibition his power of Jurisdiction is suspended, *Tr. 11 Car. 1. B. R. Rot. 446. Dodson and Lin's Case, Cro. Car. f. 471. & Roll's Cases, 2 part, f. 357 C. 1. 367. Z. 1.*

*The Ordina-
rie's power
suspended,
during Inhi-
bition.*

And note where a Parson is only Admitted and Instituted, although as concerning the Spiritual Function, he be a Parson before Induction, yet because no part of the free-hold of the Spiritual Benefice is transferred to him but by the Induction, he cannot therefore until after Induction, if the King be Patron, make any good and effectual Resignation, *vide plo. Com. 526. & 21 E. 3. 5. a.* but if a Subject be Patron, and his Presentee be admitted, such Presentee (if he be willing to leave his charge) may before Induction resign the Church, for the Spiritual Dignity was full of an Incumbent, in respect of his

*After Insti-
tution, a
Presentee
may resign
where a com-
mon Person
is Patron,
but not where
the King is
Patron.*

his Patron, and because also there is no other means to clear the Church of him, but by such Renunciation; *Doderidge, pa. 80, & 81.*

*Resignation
to whom to
be made.*

The Word *Resignare* is not the proper Word in Law for a Resignation, but *Renunciare, cedere & demittere*, are the usual Words of Resignation, *M. 12, & 13 Eliz. Dyer, f. 292. a. Doder. pa. 79.* and note that a Resignation ought to be made to the immediate Ordinary, and not to the mediate Ordinary, *Roll's Cases, 2 part, f. 358 E. 1. F. 1.* but the Incumbent of a Donative, may resign to his Patron, because it is of the Patron's Foundation, and of his Visitation and Correction, and the Ordinary hath nothing to doe with him; *P. 3 Jac. Fairchild and Garie's Case, M. Rep. f. 765 pl. 1062. & vide Doder. pa. 81.*

*The King
shall present
where an Incumbent is;
made Bishop.*

If the Incumbent be made a Bishop, the Church is void, and the King shall present to it by his Prerogative, and so it is of a Prebendary, and if the Incumbent be created Bishop of the same Diocese where he was Incumbent, the Church is void, for he cannot be Sovereign and Subject, and so it is if he be made Bishop of another Diocese, or a Bishop in

Ireland

Ireland, but note the Church is not void till Consecration; and in Case, where the King grants a Licence to the Bishop, to hold his Living in *Commendam* with the Bishoprick, if the Bishop afterwards dye, or surrender that same Living, then the Patron, and not the King, shall present to it, *vide*, 7 H. 4. 25. b. 11 H. 4. 37. b. 24 E. 3. 26. b. *Davis Rep. f. 69. a.* and see M. 42 Eliz. C. B. Sir Robert Basset, and Gee's Case, Cro. Eliz. f. 790 pl. 31 & Tr. 3 Car. I. B. R. Evan's and Ascougb's Case, *Jone's Rep. f. 58. Noye's Rep. f. 93. Latche's Rep. f. 32. & 234. 19 E. Tryal, 57. 5 E. 3. 9. 11 E. 3. 1. Vaugh. Rep. f. 22. Wynch. Rep. f. 98, 99. Woody and Bishop of Exeter, Cro. Jac. 691.*

Before the stat. 21 H. 8. cap. 13. if one had a Benefice with cure, and did accept another Benefice with cure, the first became void, but this avoidance was not by the Common Law, but by the Constitution of the Pope, of which avoidance the Patron might take notice if he pleased, and might present without any deprivation; but because the avoidance did accrew by the Ecclesiastical Law, no Lapse did incur without notice, as it is upon deprivation

where Lapse shall incur without notice, and where not.

or Resignation ; and yet the Patron may present and take notice of it, if he please, and according to this diversity, it is adjudged, *H. 24 E. 3. f. 33.* in the King, and the Bishop of *Worcester's* Case, and with this agree the Books in the *9 E. 3. 22. a. 10 E. 3. 1. 14. H. 7. 28. b. 14 H. 8. 17. a. F. N. B. 34. L.* as my Lord Cook reports in his *4. Lib.* in *Holland's* Case, and where it is said in the *5 E. 3. 9. & 11 H. 4. 37.* that the Church is not void without deprivation, this is to be interpreted, that it shall not be void to the Patron's disadvantage, but for his advantage it shall, as it is shewed before, and so all the Books are reconciled : So it appears that the *stat. 21 H. 8.* is but in affirmation of the Law aforesaid ; but not because it is affirmed by Act of Parliament, if the first Benefice be of the value of eight Pounds *per ann.* to the Patron at his Peril, to prevent a Lapse ought to present to it, because to avoidance by Act of Parliament, every one is party, and ought to take notice at his Peril, but it is otherwise if the Church be not of the yearly value of eight pounds, for then it is void merely by the Ecclesiastical Law, of which

the Patron is not bound to take notice at his Peril as aforesaid, see *Tr. 39 Eliz. B. R. in Holland's Case, Co. Rep. 4 Lib. f. 75, b. 76. a. & H. 41 Eliz. B. R. in Digby's Case, f. 79. b. Davis Rep. 69. a. M. Rep. f. 542. pl. 719. Roll's Cases, 2 part, f. 360, 361. L. 1, 2, 3, 4. Cro. Car. f. 357. & vide Tr. 14 Car. 1 B. R. the King, and the Bishop of London, and Baldock's Case, Jones Rep. f. 404. and see f. 337 P. 7 Eliz. Dyer, f. 237. a. pl. 29. & 255. a. pl. 5.*

If an Incumbent be deprivable, yet the Church is not void before deprivation; if after a *Caveat* entered, &c. a Clerk is Presented, Instituted and Inducted, although this be accounted illegal by the Canon Law, yet the Church by this is full, according to our Law, for the breach of the *Caveat* is only a breach of the Canon, and makes not the Institution void, *M. 15 Car. 1 inter Phipps & Hayter, per curiam, Roll's Cases, 2 part, f. 361 M. 2, 3. & vide Doder. ps. 74.*

The six Months whereby Lapse is Incurred, shall be accounted from the time of the last Incumbent's death, as it is said in *Catesbie's Case, Co. Rep. 6 Lib. f. 62. b.* and the six Months are to

If an Incumbent be deprivable, the Church is full till deprivation.

How the six Months for Lapse shall be accounted.

be accounted and reckoned according to the Kalender, in dividing the Year into days, to wit, 182 days, and for the odd day in the Year, the Law doth not regard it, *Hol. Rep. f. 100. Gro. Jac. f. 141. & f. 166. pl. 6 Co. 2 part, Inst. f. 361. M. 4. Jac. C. B. Catesby, and Bishop of Peterborough, and Baker's Case, Co. Rep. 6 Lib. f. 61. b.*

When the Patron is bound to take notice to prevent a Lapse, and when not.

If the Living become void by Death, Creation or Cession of the last Incumbent, then the Patron is bound at his Peril to take notice to present within six Months, *26 H. 6. 29. b. Dyer. f. 237. a. & 255. a.* but if it become void by Deprivation, or Resignation, then he may present within six Months, after Legal notice given to him by the Ordinary, *Dyer. f. 327. Doct. & Stud. 2 part, cap. 31. Roll's Cases 2 part, f. 364.*

Who is to give notice to the Patron.

In such Cases, where the Patron is to have notice before the Church can Lapse, he ought to have it from the Bishop himself or Ordinary, which notice must be given personally to the Patron, if he lives in the same County, and if he live in another County, then the notice may be published in the Parish Church, and affixed on the Church door

door, and this notice must express in certain the cause of deprivation, &c. *Dyer. f. 328. a. Hill. 18 Eliz. Bacon;* and the Bishop of *Carlisle*, and *Whitton's Case, Dyer. f. 346. a. b.* and note it is there said, that the Opinion of the *Civilians* was, that such notice ought to be *vere, proprie, & personaliter, & non ficto*, see *M. 30, & 31 Eliz. B. R. Albany*, and the Bishop of *S. Asaph's Case, Cro. Eliz. f. 119. & Leon. Rep. 1 part, f. 31. pl. 39 Tr. 44 Eliz. B. R. Green and Baker's Case, Co. Rep. 6 Lib. f. 26. vide Hob. Rep. f. 318. Hel. Rep. f. 7. and Roll's Cases, 2 part, f. 365. T. 1, 2.*

In all Cases where the Church doth Lapse to the Bishop or Archbishop, and the Patron doth present his Clerk before the Bishop or Archbishop have Collated, the Bishop, &c. is bound to admit the Clerk of the true Patron, and cannot take advantage of the Lapse; but if the Bishop Collate, and the Patron present before Induction, he comes then too late, *13 E. 4. f. 3. b. 11 H. 4. 80. a. & vide Tr. 10 Eliz. Dyer. f. 277. a. pl. 56. Roll's Cases, 2 part, f. 367. A. 1, 2.* if the Bishop Collate wrongfully, and the Patron dyes, the

The Patron after Lapse incurred, may present before the Bishop Collate

Executors may bring a *Quare Impedit* to remove the Clerk, *Leon. Rep. 4 part, f. 15. pl. 53.*

Lapse shall incur against an Infant, or Feme Covert.

If an Infant Patron, or Feme Covert do not present where they have Title, within six Months, their Churches shall Lapse to the Ordinary, 33 E. 3. *Quare Impedit*, 46. Roll's Cases, 2 part, f. 367. H. 1, 2.

Where Lapse shall incur without notice, and where not.

If the Ordinary refuse a Clerk because he is *Criminosus* or Illiterate, in this Case the Patron shall not have six Months to present, after notice given, but from the avoidance, but in such Case no Lapse shall accrew, unless the Patron shall have notice, and if the Clerk be refused for a private cause, or for a notorious crime, as that he is common Advowterer, or a Murderer, yet no Lapse shall be of such Church without notice; but if a Spiritual Patron present a Clerk who is refused because he is illiterate, in such Case it shall Lapse without notice, because the Law supposeth that he may have Cognizance of his sufficiency before he presents him, *vide M. 15, & 16 Eliz. Dy. er. f. 327. b. pl. 7. 14 H. 7. 21. a. Roll. f. 49, b. 50. b. 38 E. 3. 2. Roll's Cases 2 part, f. 364 Q. 8, 9 R. 1, 2, 3, 4, 5*

and

and see P. 12 Eliz. C. B. Bennysfield and Pickering's Case, An. Rep. 1. part f. 16. pl. 34. & f. 62, 63. & f. 30. pl. 70.

If a Church become void by Depri-
vation or Resignation, the six Months
shall be reckoned from the time of the
notice given to the Patron, and not
from the avoidance; and if a Resigna-
tion be made to the Bishop, no Lapse
accrues without notice, and the six
Months to be reckoned from that time,
so if the Bishop dyes who takes the
Resignation, yet no Lapse shall accrue
to his successor or without notice given
to the Patron, and where notice ought
to be given and none is given within
eighteen Months, by which the King
ought to have presented by Lapse, if
notice had been given, yet in this Case
no Lapse shall accrue to him, because
no Lapse shall be given to the King,
where no Title of Lapse was to the in-
feriour Ordinary, because the King
comes in to supply his default. 1 H. 7.
9 Doct. & Stud. 2 Lib. cap. 31. 5 E. 4. 3.
b. Rell. 49. b. Dyer. f. 348. a. Roll's Ca-
ses, 2 part, f. 364 Q. 10. 365 R. 7, 8, 9
S. 1, 2. 367 Z. 3. & vide Tr. 24 Eliz.
C. B. the Queen, and Bishop of Lincoln
and York's Case, An. Rep. 1 part, f. 62.
pl. 136.

From what
time the six
Months shall
be reckoned.

How a Lapse
shall be pre-
vented when
the Bishop is
not named in
a Quare Im-
pedi.

In a *Quare Impedit* against a disturber, the Bishop not being named in the Writ, if the Plaintiff recover within the six Months, yet if the six Months be run out before the Writ to the Bishop taken out, the Lapse shall accrew to the Ordinary, and his Clerk shall not be removed, if he Collate before receipt of the Writ; and so if after the recovery within the six Months, the Defendant brings a Writ of Error, and pending that the six Months pass, the Lapse shall accrew to the Ordinary, but if the Plaintiff in such Case brings a *Quare Incumbravit* against the Bishop, and after the six Months pass, there the Lapse shall not accrew to the Ordinary, for the *Quare Incumbravit* prevents it, 17 E. 3. 75. 5 E. 1. 75. Roll's Cases, 2 part, f. 366 V. 3, 4 X. 2. 11 H. 4. 80. Co. Lit. f. 344. b. & vide Cro. Jac. f. 93.

If the Bishop
be named in
a Quare Im-
pedi, he
cannot Collate
by Lapse.

If the Ordinary be not named in a *Quare Impedit*, he may Collate by Lapse if the six Months incur *Pendente Lite*, as is shewed before, but if he be named, he cannot take advantage of the Lapse, but ought to see that the Clerk be served, by allowance out of the profits, to be taken by Sequestration, and

on, and as he is bound not to take advantage of any Lapse, so is also the *Matropolitan* and the King; for where no Lapse incurs to the Ordinary, there none can incur to them, and so it was adjudged in one *Duke's* Case, as my Lord Cook said, and it was said by *Popham*, that the course to stop strangers from presenting *Pendente Brevi*, is after a *Quare Impedit* brought, to sue out a *Ne Admittas* to the Bishop, and if the Bishop then admit the Clerk of any other pending that suit, and the Plaintiff recovers, he shall have a *Quare Incumbavit*, and thereby remove any who comes in pending the Writ, by whatsoever Title he comes in, and shall force him who hath right to recover by *Quare Impedit*; but if he sues not out such a Writ of *Ne Admittas*, if then the Incumbent of a stranger should come in by good Title, *Pendente Brevi*, he shall barr him in a *Scire Facias*, and shall hold it, and note that this Writ of *Ne Admittas*, may be sued out either by the Plaintiff or Defendant in the *Quare Impedit* to the Bishop, *vide* 21 H. 6. 45. 2 E. 4. 11. b. F. N. B. 37. F. H. & 38 B. C. 48 I. If a Man do recover his Presentation in the Common Pleas against

the Bishop, then he may have a Writ to the same Bishop to admit his Clerk, or unto the *Metropolitan*, and after that, he may have an *Alias & Plures*, and so an Attachment if the Bishop do not execute the Writ, see *M. 3 Jac. B. R.* in the argument of *Lancaster and Low's Case*, *Cro. Jac. f. 93.*

If a Bishop
be a distur-
ber, no Lapse
shall incur
by it.

If the Bishop be a disturber, no Lapse shall be by this disturbance, although the Church be void six Months; so if the Patron present to the Bishop, and he will not examine the Clerk, but delays him, by which the six Months pass, yet no Lapse shall accrew to the Bishop by this because he is a disturber, and it comes by his own act, *Tr. 3 Jac. B. R. inter Palmer & Smith*, *Roll's Cases*, 2 part, f. 366 *V. 5, 6. & 369 E. 3, 4.*

A Church
Parochial
may be do-
native, &c.

Note, that a Church Parochial may be donative and exempt from all Ordinary Jurisdiction, and the Incumbent may resign to the Patron, and not to the Ordinary, *unumquodque eodem modo quo Colligatum est dissolvitur*, neither can the Ordinary visit, but the Patron by Commissioners to be appointed by him; yet a meer *Laicus* is not presentable to such a donative, but an able Clerk, *infra sa-*

crat

cras ordines, for albeit, he come in by the Donation, and not by Admission or Institution, which in this Case is not requisite, yet his Function is spiritual, and if such a Clerk donative be disturbed, the Patron shall have a *Quare Impedit* of this Church donative, and so it is of a Prebend Chantry Chapel donative and the like; and no Lapse shall incurr to the Ordinary, unless it be specially provided so in the Foundation; but if the Patron of such a donative doth once present to the Ordinary, and his Clerk is Admitted and Instituted, it is by this become presentable, and never shall be donative after: and if a donative become void, and a stranger presents to it, and his Clerk is Admitted, Instituted and Inducted, yet this is no Usurpation to the true Patron, but all this is meerly void, *H. 1 Jac. B. R. inter Fairchild & Gayer, Co. Lit. f. 344. a. Cro. Jac. f. 63. pl. 1 H. Rep. f. 60 Brownl. Rep. 1 part, pa. 291. F. N. B. 35 E.*

If a Bishop suffer an Usurpation of a Church in right of his Bishoprick, this shall not bind his successor, but himself only during his own time, and the successor may have a *Quare Impedit*, *An Usurpation upon a Bishop, binds not his Successor.*

dit, or present to the next turn, and so it was resolved, *M. 21 Jac. B. R. inter Dalton & Pamphlin*, and the Bishop of Ely, *Cro. Jac. f. 673. pl. 6. Jones's Rep. f. 45. & Laye's Rep. f. 80.*

In what Cases Lapse incurs not without notice.

When the Church doth become void by Deprivation or Resignation, or by refusal of the Presentee, for Non Ability or for crime, in such Case the Bishop ought to give notice thereof to the Patron, otherwise no Lapse incurs, but after the six Months past, the Patron may have a Writ to the Bishop, if the Church remain void; and the Bishop hath not Collated thereunto, *F. N. B. 35 H. I.*

To what Benefices of the King's, the Chancellor shall present.

The Chancellor of England shall present to all the King's Churches which are under the value of twenty Marks by the Year, which are in the King's gift, and in the right of the Crown, but if the King have them by any other Title, then the Chancellor shall not present unto them, *F. N. B. 35 R.* Note, that the Lord Chancellor presented to a Benefice which belonged to the King, which was above value, and in this Case it was agreed by *Hobbert* Chief Justice of the Common Pleas, and *Tanfield* Chief Barron, that this

this Presentation remained good till it was avoided, *Parson and Mortee's Case, Wintb. Rep. f. 19.*

Where Lapse incurr after the first six Months to the Ordinary or Bishop of the Diocess, if he present not within six Months after, then it goes to the *Metropolitan* of the Province, and if he present not within other six Months, then it goes to the King as Supream Ordinary of all Benefices, *Doct. & Student, 125. Hughe's gr. Abr. 1 part, pa. 134. Ca. 1.*

To whom Lapse shall incurr.

Note, a Church Presentative may become void five manner of ways, viz. 1 by Death, 2 by Creation, 3 by Resignation, 4 by Deprivation, 5 by Cession; as by taking a Benefice Incompatible, *Co. Lit. f. 120. a. Doder. pa. 7.*

How many ways a Church may become void

If a Church be Litigious, as where two Patrons present to the same Church by several Titles, and the Bishop knows not which hath the very true and rightful Title to the same, and so knows not which Clerk to admit with safety, least by admitting the one and refusing the other; he become a disturber, in this Case the Bishop may award a *Jure Patronatus*, to inquire who is the true and undoubted Patron, and who ought

When the Bishop may award a Jure Patronatus.

ought to present to the Church for that turn, and this Writ is usually obtained at the Prayer of one or both Parties, to such Commissioners as the Bishop thinks good to name, who send their *Mandate* to some Officer of their own to summon a Jury, who are to be one half Clerks, and the other half Laymen, and after they are sworn, they hear the Evidence, and are to give their Verdict to the Commissioners, but the Bishop is not bound to award this Writ *ex Officio*, but at the Prayer of the parties, 8 E. 4. 24. *b. per curiam*, 5 H. 7. 20. *b. per Reeble*, 22 H. 6. 30. *per Mark*, 34 H. 6. 40. 35 H. *b. 19. b. & vide*, Rol's Case, 2 part, f. 384 P. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. & P. 26. *Elix. C. B. Gerrard's Case*, Leon. Rep. 2 part, f. 168. pl. 205. Deg. cap. 3.

*The Verdict
upon a Jure
Patronatus
not binding.*

But note the Verdict upon this Inquest, is neither binding to the Bishop, nor the parties in some respects, for the Bishop may accept the Clerk of him against whom the Verdict doth pass if he please, but then it is at his Peril, for if the other party bring a *Quare Impedit* and recover, then the Bishop will be found a disturber, but if the Bishop

shop admits the Clerk of him for whom the Verdict is given, then if the other bring a *Quare Impedit* and recover, yet if the Bishop plead this special matter it shall excuse him, though it bind not the other parties right, and of this Opinion was my Lord *Hobbert*, in his argument in the Case between Sir *William Ellis* Knight, and the Archbishop of *Tork*, and *Taylor* and Bishop, *Hob. Rep. f. 317, & 318.*

CHAP. VI.

Of Pluralities, Dispensations, and non residence,

Note, that by the stat. 21 H. 8. it is enacted, that if any Person or Persons, having one Benefice with cure of Souls, being of the yearly value of eight pounds or above, accept and take any other with cure of Souls, and be Instituted and Inducted in possession of the same, that then and immediately after such possession had thereof, the first Benefice shall be adjudged void, and it shall be Lawfull for every Patron having.

If one have a Living with cure of eight pounds value, and accept another, the first is void.

having the Advowson thereof, to present another, and the Presentee to have the benefit of the same in such manner and Form as though the Incumbent had dyed or resigned, any Licence, Union, or other Dispensation to the contrary notwithstanding, 21 H. 8. cap. 13. the yearly value of eight pounds or above, is usually taken to be according as Benefices were rated in the 26 of H. 8. and is now made use of in the first fruits office; but some hold that it shall be taken according to the very true improved value, *Ideo Quere. vide ps. 128.*

*Who may
have Plurality of Livings.*

But there is a Proviso in the same Statute, that all Spiritual Men which are of the King's Council, may purchase Licence, or Dispensation to take and keep three Parsonages or Benefices with cure of Souls, and that all others, being the King's Chaplains, and not sworn of his Council; and the Chaplains of the Queen, Prince, or Princess, or any of the King's Children, Brethren, Sisters, Uncles, or Aunts, may purchase Licence, or Dispensation to receive and keep two Parsonages or Benefices, with cure of Souls, and so the eight Chaplains of every Archbishop,

shop, the six Chaplains of every Duke, the five Chaplains of every Marquess and Earl, the four Chaplains of every Viscount, the six Chaplains of every Bishop, the three Chaplains of the Chancellor of *England*, and of every Baron and Knight of the Garter, the two Chaplains of every Dutchesse, Marchioness, Countess and Baronesse being Widows, the two Chaplains of the Treasurer and Controller of the King's House, and of the King's Secretary, Dean of his Chapel, *Almoner* and *Master of the Rolls*, may also procure Licence, or Dispensation to receive and keep two Parsonages or Benefices apiece, with cure of Souls, 21 *H. 8. cap. 13.* and the Chief Justice of the King's Bench, and Warden of the Cinque Ports, may keep one Chaplain apiece, who may Purchase, Licence, or Dispensation to receive and keep two Parsonages or Benefices with cure of Souls, and so may the Brethren and Sons of all Temporal Lords, and of every Knight, who are born in *Wedlock*, and all Doctors and Batchellors of Divinity, Doctors of Law, and Batchellors of Law Canon and every of them, which shall be admitted to
any

any of the said degrees, by any of the Universities of this Realm, and not by Grace only, may also purchase Licence, or Dispensation to receive and keep two Parsonages or Benefices with cure of Souls, and it is provided that every of the Chaplains abovesaid so purchasing Licence, and Dispensation to receive and keep Benefices with cure of Souls as abovesaid, shall be bound to have and exhibite where need shall be, Letters under the sign and Seal of the King or other their Lord and Master, testifying whose Chaplains they be, or else not to enjoy any such Plurality of Benefices, by being such Chaplains, 21 H. 8. cap. 13.

*Note to take
more Chap-
lains then a-
bove Limit-
ed, to ad-
vance them
to Plurality
of Benefices.*

Note, that it is provided, that no Person or Persons, to whom any number of Chaplains, or Chaplain by any of the Provisions aforesaid is Limited, shall in any wise, by colour of any of the same Provisions, advance any Spiritual Person or Persons above the number to them appointed, to receive or keep any more Benefices with cure of Souls, than is above Limited, and if they do, then every such Spiritual Person and Persons so advanced, above the said number, to incur the pain and penalty

nalty contained in the said Act : and it is further provided, that every Dutcheſs, Marchionefs, Counteſs, and Baroneſs Widdows, that ſhall take any Huſbands under the degree of a Baron, may take ſuch number of Chaplains as is above Limited to them being Widdows, and that every ſuch Chaplain may purchaſe Licence to have and take ſuch number of Benefices with cure of Souls, in manner and Form as they might have done, if their ſaid Ladies and Miſtreſſes had kept themſelves Widdows, 21 H. 8. cap. 13.

No Deanry, Archdeaconry, Chancellorſhip, Treſurerſhip, Chanterſhip or Prebend in any Cathedral or Collegiate Church, nor Parſonage that hath a Vicar endowed, nor any Benefice perpetually appropriate, are to be taken or comprehended under the name of Benefice with cure of Souls, 21 H. 8. cap. 13.

What ſhall be accounted no Benefice with cure.

The Archbiſhop of *Canterbury* for the time being and his Succeſſors, after good and due examination by them had of the cauſes and qualities of the Perſons procuring for Licences, Diſpenſations, Compoſitions, Faculties, Delegacies, Reſcripts, Instruments or other

The Archbiſhop of Canterbury may grant Diſpenſations, &c.

other writings, by themselves or by their sufficient Commissary or Deputy, by their discretions from time to time, have power to grant and dispose by an Instrument, under the Name and Seal of the said Archbishop, to any of the King's Subjects all manner of such Licences, Dispensations, Faculties, Compositions, Delegacies, Rescripts, Instruments, or other writings, for any such cause or matter, whereof heretofore such Dispensations, &c. have been accustomed to be had at the See of Rome, or by the Authority thereof, or any Prelate of this Realm, but no such Licences, &c. which have not been accustomed to be had or obtained at the Court of Rome, nor by Authority thereof, nor by any Prelate of this Realm, shall be granted without the approbation of the King and his Council, upon pain that the Granter of such Licences, &c. shall make fine at the King's will and pleasure, 25 H. 8. cap. 21.

What Licences, &c. are to be confirmed under the King's great Seal.

And no manner of Dispensations, Licences, &c. to be granted by the Archbishop or his Commissary, whose Tax for the Expedition thereof at Rome extended to the sum of four pounds or above, are to be put in Execution,

cution; till the same be first confirmed by the King, under the great Seal, and Inrolled in the Chancery by the Clerk appointed for the same; which writing under the Archbishop's Seal, and the Confirmation thereof under the great Seal, are to be remitted to the parties from time to time procuring the same, but such Licences, &c. whose Tax for the Expedition thereof at Rome, was under four pounds, shall pass under the Archbishop's Seal, and need not be confirmed under the great Seal, unless the parties desire to have them confirmed, and in such Case they are to pay for the great Seal only five Shillings, and not above; over and besides such Taxes as are to be paid for the writing, making, registering, confirming, and inrolling of such Licences, &c. under the said Tax of four pounds, and all such Licences, &c. granted as aforesaid, have the same force and power as those formerly obtained of the See of Rome, any decree Canon, Decretal, &c. to the contrary notwithstanding; and both the Archbishop's Clerk or Register, for Dispen-sations, Faculties, &c. and the King's inrolling Clerk in Chancery must subscribe their names to every such Licence,

cence, Dispensation, &c. that shall come to their Hands, to be written, made, granted, sealed, confirmed, registred, and inrolled in Form aforesaid; and those that receive more for Dispen- sations, &c. than is set down in the Books of Taxes, one whereof remains with the Archbishop's Register of Fa- culties, &c. and the other with the King's inrolling Clerk of Dispen- sations, &c. in Chancery, are to forfeit ten times the value of what they so ex- act and receive, one Moiety to the King, and the other to the Informer, 25 H. 8. cap. 21.

*What reme-
dy where the
Archbishop
refuseth to
grant Dis-
pensations,
&c.*

Note, that it is provided by the said Statute, 25. H. 8. that nothing therein contained, shall be prejudicial to the Archbishop of York, or to any Bishop, or Prelate of this Realm; but that they may Lawfully dispence in all causes, in which they went to dispence by the Common Law or custome of the Realm, afore the making of the said Act, with a Proviso also, that when the Sec of Canterbury should at any time be void, that then such Licences, Dis- pensations, &c. may be granted under the Name and Seal of the Guardian of the Spiritualities of the said Arch-
shopric

shoprick for the time being, according to the Form aforesaid, which shall have the same force as if they had been granted by the Archbishop himselfe; and it is further enacted, that if the Archbishop of *Canterbury*, or Guardian of the Spiritualities, do refuse to grant such Licences, Dispensations, &c. as aforesaid; then the Chancellor of *England*, or Keeper of the great Seal for the time being, upon complaint thereof, shall direct the King's Writ to the said Archbishop or Guardian so refusing, enjoining him thereby upon a certain pain therein to be Limited, by the discretion of the said Chancellor, or Keeper of the great Seal, that he do in due Form, grant such Licence, Dispensation, &c. according to the Request of the Procurers of the same, or else signify to the King in Chancery at a certain day, the occasion why he denies the same, and if it appear to the Chancellor, &c. by such Certificate, that the cause was reasonable and good, and being proved by due search and examination of the said Chancellor or Lord Keeper, it is to be allowed, and if it appears upon the said Certificates, that the said Archbishop or Guardian, wilfully,

fully without just cause, do refuse or deny to grant such Licences, &c. then it being made appear to the King that such Licences, &c. may be granted without offending the Holy Scriptures and Laws of God, his Majesty in such Case may send his Writ of Injunction, under the Great Seal, out of his Court of Chancery, commanding the Archbishop or Guardian so refusing, &c. to make sufficient grant thereof by a certain day, under a certain pein, and if the Archbishop or Guardian, after the receipt of the said Writ, refuse or deny to grant such Licences, &c. and shew and prove before the King's Majesty, no just cause for the same; then the said Archbishop or Guardian so refusing, shall forfeit to the King, such penalty as is expressed in the said Writ of Injunction; and the King may grant his Commission under the great Seal to any two Spiritual Prelates, whom he pleaseth, as will grant the same Licences, &c. so refused to be granted by the Archbishop or Guardian as afore said; and such Licences, &c. granted by such two Prelates, shall have the same force as if they were granted by the said Archbishop or Guardian, 25 H. 8. cap. 20.

And it is further provided, that this Act shall not extend to the repeal or derogation of the 21 H. 8. cap. 13. nor to give Licence to any Person or Persons, to have any more number of Benefices, than is Limited in the said Act; and it is also provided, that if any Person or Persons, Subject or Resiant within this Realm, or within any of the King's Dominions, do sue to the Court or See of Rome, or to any Person claiming to have his Authority by the same, for any Licence, &c. or put in Execution any such Licence, &c. obtained from Rome or the See of Rome, or from any claiming Authority by the same, or attempt or doe any thing or things contrary to the stat. 25 H. 8. aforesaid, or maintain, allow, admit, or obey any manner of Censures, Excommunications, Interdictions, or any other process from Rome, of what Name or Nature soever it be to the Derogation of the said Act, or of any thing or things to be done by Authority of the same, every Person so offending, and being convicted thereof, shall incurr and run into the pein of a Præmunire, 25 H. 8. cap. 21. and see the 13 Eliz. cap.

*The penalty
for suing to
the Court of
Rome, for
Dispensa-
ons, &c.*

2. if this be not made High Treason by that Statute.

No Noble-
man or o her
can, after
their just
number of
Chaplains
are advan-
ced, take
any more to
qualify them
during the
other Chap-
lains lives.

If any Noble-man or other Person, who are Capacitated to keep Chaplains, have once retained their full number, who are admitted to two Benefices apiece, they cannot then whilst the others are living, retain any more to qualify them to take a second Benefice, as appears by this Case following, *Sr. James Crofts*, Controuller of the House to Queen *Elizabeth*, had two Chaplains according to the *stat. 21 H. 8.* who were both preferred to two Benefices apiece, according to the Purport of the said Statute, and afterwards he takes another Chaplain, (having one Benefice) who procures a second, as being his Chaplain, and the Queen presented to his first Benefice, and brought a *Quare Impedit* against him; and all the Court held, that after two are advanced, a third cannot be advanced, for there can be but two at one time, who shall take advantage of the Statute. And it was agreed in that Case, that there is a difference between the words to be advanced to a Benefice, and to be advanced to take and keep a Benefice, for one may be advanced to a Benefice who cannot

cannot Lawfully keep it, for if one who hath a Benefice with cure, &c. take another, he cannot keep these two Lawfully, but such a Chaplain who is advanced according to the Statute, may receive and keep two Benefices, *Tr. 27 Eliz. C. B.* the Queen and Bishop of Gloucester, and *Sauaker's Case, An. Rep. 1 part, f. 200. pl. 236. & vide Co. Rep. 4 Lib. f. 90. a.* the same Case cited there, but said to be *P. 28. Eliz. Rot. 1130.*

Also, where a Lord, Countess, or other Person, have retained their full number of Chaplains, and afterwards retain one or more Supernumerary Chaplains, these last Chaplains are not qualified to have Pluralities of Livings, although they obtain Dispensations and are first preferred; for though by the Common Law, a Countess may retain as many Chaplains as she please, yet she can have but two capable of Dispensation by the Statute, and reason requires that he who had served longest shall be first preferred, *et qui prior est tempore, potior est jure*, and although the two first were dead before the advancement of the third, yet because they were alive at the time of the Retainer, which Retainer was by the Common

First Chaplains only qualified to take Plurality of Benefices.

Law and not by the Statute, therefore he ought to have a new Retainer after their Death, and before his advancement : for *quod ab initio non valet, in tractu temporis non convalescet*, Tr. 43 Eliz. C. B. the Queen and Bishop of Lincoln and Drurie's Case, Co. Rep. 4 Lib. f. 89. b. M. Rep. f. 561. pl. 763. Cro. Eliz. f. 723. pl. 56. & 839. pl. 15. and see P. 31 Eliz. Rot. 728. the Queen and Bishop of Lincoln, and the President and Schollers of Mawdlin College in Oxford, and Skiffin's Case, M. Rep. f. 277. pl. 431. and Savil's Rep. f. 101. pl. 181.

*A Retainer
may be as
well by word
as by writing.*

And note that a Retainer to be Chaplain, may be as well without writing as with writing, for it is not of necessity, but only in Case where the same is to be shewed, and if a Chaplain obtain a Patent or Testimonial from his Lord or Lady whose Chaplain he is, before he come to be Impleaded, so that he have it to shew to the Court, although he had it not, at the time of his taking a Second Benefice yet it is well enough, and so it was Adjudged, M. 35 and 36. El. in the Exchequer between *Whetstone* and *Hickford*, Savill's Rep. Rep. fo.

135. pl. 213. and see the Queen and Bishop of Lincoln, and *Skiffin's Case*, *Moo. Rep. fo. 277. pl. 432.*

If the Son and Heir Apparent of a Baron or other Lord, Retain a Chaplain, and give him a Testimonial under his Hand and Seal, and afterwards his Father dyes, and the Honour descends to him, and the Chaplain purchaseth a Dispensation, this Retainer and Testimonial will not serve his turn, because they were not avalleable at the Commencement; And if a Baron or other Lord Retain their full number of Chaplains according to the Statute, and then the Lord or other Person dischargeth one of them out of his Service, in this Case he cannot Retain another during that Chaplain's Life, to qualifie him for pluralities, for by such means he might Advance Infinite of Chaplains without number, and so the Statute should be defrauded, *Co. Rep. 4. Lib. fo. 90. a.* But if a Lord or other Person whose Chaplains are qualified according to the Statute, be discharged out of his Service by his Master, (as he may) before he be preferred to a Second Benefice, or if his Master dye, or is attainted,

How Chaplains may loose or gain qualification for plurality.

tainted, degraded, or displaced, before such Chaplains preferment to a Second Benefice, in all these Cases he looseth his qualification, to have plurality of Livings Incompatible. *Moo. Rep. fo. 678. pl. 924. & vide Co. Rep. 4. Lib. 117. b. 118. b.*

*A Lord, &c.
to Retain a
number of
Chaplains ac-
cording to his
best quality.*

If a Baron who by the Statute may have Three Chaplains, be made Warden of the Cinque Ports, who may by the Statute have one Chaplain in respect of his Office, yet he shall have but Three, and so if he be made an Earl, who may by the Statute have Five Chaplains, yet in such Cases he shall not have Eight as Baron and Earl, but only Five according to his best Title, and so it is of other Persons who by the Statute may Retain Chaplains, *Quia difficile est ut unus homo vicem duorum sustineat*, as the Book saith, *Co. Rep. 4. Lib. fo. 90. b. 118. a.*

*If a Chap-
lain be pre-
ferred to two
Benefices, his
Lord's death
&c. doth not
incapacitate
him.*

Where the Chaplains of a Baron or other Person, who are Capacitated to have Chaplains by the Statute, are in the Life-time of their Lords, preferred to Two Benefices according to the Statute, if their Lords dye afterwards, they may notwithstanding keep their Livings, but although they be Resident upon

upon one of them, yet they shall be punished for Non-Residence upon the other, as my Lord Cooke saith it was Adjudged in Parson Boyton's Case, and therefore it behoves such Persons to obtain of the King a *Non-obstante*; the like Law is when a Baron is Attainted of Treason or Felony, or when any Officers who may have Chaplains, are removed from their Office, & sic de similibus; *Co. Rep. 4. Lib. fo. 119. a. Dyer, fo. 312. b.*

It is said to be Adjudged, that if an Earl or other Lord that is an Infant, be in the Guardianship of another Lord, and live in the House with him, yet he may Retain and Qualifie Chaplains by the Statute, for the words of the Act are general, and although the Guardian be a Noble-man, and have Chaplains allowed him by the said Act, yet the Pupil may Retain Chaplains also, p. 44. *El. in a Quare Impedit* between the Queen and the Bishop of Salisbury and others, *Co. Rep. 4. Lib. fo. 119. a.*

If a Baroness who is a Widdow Retain Two Chaplains, and they purchase a Dispensation, and then the Baroness Marries either to a Noble-man or one

An Infant Lord may qualifie Chaplains.

The Marriage of a Widdow, doth not incapacitate her Chaplains Retained before.

one below the degree of Nobility, before the Chaplains accept a double Benefice, yet this is no Countermand, discharge or disability to them, no more it is if her Second Husband dyes, and she is a Widdow again, but if she dyes before they are preferred, then it is otherwise, *M. 44. 45. El. C. B. The Queen and Bishop of Peterborough and Alton and Cartmell's Case, Co. Rep. 4. Lib. fo. 117. and Moo. Rep. fo. 678. pl. 922.*

If a Lord retain his double number of Chaplains, the first are only qual. f. a. for plurality, &c.

If a Lord retain his double number of Chaplains at one time, as if a Baron who is to have Three Retain Six by his Letters Testimonial, and all these Six are preferred to six several pluralities, in this Case the Three which are first promoted are warranted by the Statute, and yet the Retainer was not according to the Statute; *in equali Jure melior est Conditio possidentis*, and the other Three last are not by the Statute Reputed for his Chaplains, so long as the first Three who are promoted by his Service do Live, for otherwise the Statute should be defrauded; and by the opinion of *Catlyn Sanders* and *Dyer*, where the Chaplain of a Lord, hath two Benefices with Cure,

Cure, without a special Licence or Dispensation of the Metropolitan, he is not in danger to loose his Plurality by force of the Statute of 21 H. 8. for the words are not that he ought to Sue for a Licence, &c. but that he may Sue for a Licence, &c. but notwithstanding such Chaplains fall within the danger of the Spiritual Law, Tr. 14. Eliz. C. B. Dyer f. 312. b. pl. 88. &c. vide Co. Rep. 4. Lib. f. 90. a.

Where one is possessed of a Benefice with Cure, and being Qualified, is presented to a Second Benefice, and is admitted and Instituted to the same, and before his Induction he procures a Dispensation, in this Case the Dispensation comes too late, for upon the bare Institution, *Ecclesia plena & consultata existit*, against all Persons but the King, for by the Institution he is compleat Parson (if he Subscribe to the Articles of Religion) as to the Spiritualities; to wit, *Cura Animarum*, and may Celebrate Divine Service, Preach, &c. but as to the Temporalties, as the Glebe Land, Tythes, &c. he hath no Right, or can Sue for them till Induction; and before the Statute 21 H. 8. the acceptance of a Second Living,

Dispensation
after Institution
comes
too late.

whatsoever the value of the first were, made the first void; as appeareth by a Canon made in the year 1215. at the Council of Lateran held under Pope Innocent the Third, the Tenor whereof is here inserted, *Statutum est quod quicumque receperit aliquod Beneficium habens Curam Animarum annexam, si prius tale Beneficium obtinebat eo sit Jure privatus, & si forte illud retinere contenderit aliam etiam spoliatur; Is quoque ad quem prioris spectat donatio illud post receptionem alterius conferat cui merito videris Conferendum;* by which it appears that by the acceptance of a Second Benefice, the first is void *ipso Jure*, and the Patron may present if he please; And it was resolved that a grand Inconvenience would ensue, if the first Benefice should not be void by Institution to the Second, for then one might be Instituted to diverse Benefices with Cures; so that he could not be able to discharge them all, and yet no other could be presented to any of them, which would be inconvenient; And it hath been adjudged that where one is Presented, Admitted and Instituted to a Benefice with Cure, above the value

value of Eight pounds *Per annum*, and afterwards before his Induction, he accepts another Benefice with Cure, and is Inducted into it, that by this the first is void by the Statute, 21 H. 8. for the words of the Act are, *If any Person having one Benefice with Cure, &c. accept and take another, &c. and he which is Instituted to a Benefice, is said in Law to have accepted a Benefice, and to have a Benefice*, H. 41. Eliz. B. R. Digby's Case, Cr. Rep. 4. Lib. f. 78. b. & M. Rep. f. 433. pl. 609. the same Case by the Name of Robin's and Gerrard and Prince there, and see p. 31. Eliz. B. R. Underhill and Savage's Case, Leon. Rep. 1. part, f. 316. pl. 442. Vaughn. Rep. f. 131. Co. 2. part, Inst. f. 358. H. 43. Eliz. C. B. Robin's and James's Case, Gouldes. Rep. part 162. pl. 97. p. 15. Jac. C. B. Morgan and Glover's Case.

A Chaplain of the Arch-bishop of Canterbury having a Benefice of the Queens Gift, procured a Dispensation of the Arch-bishop of Canterbury his Lord and Master to have a Triality; the Queen under her Great Seal Confirmed the Dispensation with these words, *Scil. Ita quod omnibus & singulis in iisdem*

*Dispensation
for Triality
not good.*

Literis

Literis specificat: frui, uti, & potiri valeat, libere, quiete, & Impune absque Impedimento, &c. aliquo Statuto Adu vel Restrictione in contrarium edit. & proviso, aut aliqua alia re, causa vel materia quacunque in aliquo non obstante, &c. so by force hereof the Chaplain took two other Livings Incompatible, by reason of which Acceptance it was adjudged the Living became void, notwithstanding the Confirmation of the Dispensation, *Tr. 18. Eliz. C. B. Coxe's Case, Dyer, f. 351. pl. 25. & vide f. 327. a. pl. 4.*

Not Reading
the Articles,
&c. makes
the Living
void.

Note this Case following, one *Higden* was lawfully Presented, Admitted, Instituted and Inducted into the Rectory of *Wrington* in *Somersetshire*, being a Benefice with Cure of Souls of Fifty pounds *Per annum*, and in the King's Books but of Five pounds *Per annum*, and afterwards he was lawfully Presented, Admitted, Instituted and Inducted into the Rectory of *Elme* in the same County of Forty pounds *Per annum*, and but Ten pounds in the King's Books, and Subscribed the Articles of Religion according to the Act 13 *Eliz. Cap. 12.* and was lawfully Incumbent of the said Rectory of *Elme*,
but

but after did not read the Articles of Religion within two Months after his Induction, to the Church of *Elme* according to the Act, 13 *Elix.* And in this Case it was Adjudged that *Higden* had lost both his Livings; for as to the first Living, if a Man have a Benefice with Cure of Souls, whatsoever the value be, and is Admitted and Instituted into another Benefice with Cure of what value soever, having no Qualification or Dispensation, the first Benefice is so *ipso facto* void, that the Patron may present another to it if he please, but if the Patron do not or will not present to it, then no Lapse shall Incur if the Living be under value, until deprivation of the Incumbent and notice thereof given to the Patron; but if the Living be of the value of Eight pounds or above, the Patron at his Peril is to present within Six Months, by the Statute, 21 *H. 8.* and as to the Second Living, by his not reading the Articles, he stands deprived *ipso facto*, and so both are lost, *H. 22, 23. Car. 2. C. B. Sbute and Higden's Case, Vaugh. Rep. f. 129.*

Note

A Dispensa-
tion good
though not
Inrolled

Note that a Dispensation granted by the Arch-bishop of *Canterbury*, to one who is Created Bishop to hold a Benefice in *Commendam*, although it be not Inrolled in Chancery according to the Statute, 25 H. 8. but is only entered in the Register of the Arch-bishop, yet it is good enough, and so it was Adjudged, M. 6. 7. Eliz. C. B. in the Case of *John Parkhurst* Bishop of *Norwich*, Dyer, f. 233. a. Doder. pa. 94.

A Dispensa-
tion after
Consecration
is too late.

But such Dispensation must be before Consecration, or else it comes too late; yet the King *ex summa Autoritate Ecclesiastica qua fungitur*, may Grant (to the Bishop that is Consecrated) power to take and Retain, by Presentation, Institution and Induction, any Spiritual Benefice, and to hold the same in *Commendam* notwithstanding his Estate of being Bishop, for so the Pope used to do, and the same Authority is acknowledged by the Statute, 25 H. 8. to be in the King of this Realm, which was within this Realm by the Pope, Doder. pa. 95.

Who quali-
fied for a
Living of
Thirty
pounds, &c.

By the Statute, 13 Eliz. None shall be admitted to any Benefice with Cure, of or above the value of Thirty pounds yearly in the Queens Books, unless he be

be a Batchellor in Divinity, or a Preacher lawfully Licensed by some Bishop within this Realm, or by one of the Universities of Cambridge or Oxford, 13 Eliz. cap. 13.

If a Parson have a Benefice of above the yearly value of Eight pounds, and afterwards he takes another Benefice with a Dispensation, and after this he takes a Third Benefice, his first Benefice is only void, Adjudged *per Curiam*, M. 5. Jac. C. B. Godb. Rep. pa. 153. pl. 201. but it said by Heron in Noye's Rep. that both the first and second shall be void; *vide* the King and the Bishop of Chichester's Case, Noye's Rep. f. 149.

Acceptance of Three Benefices, the first only void.

By the Statute, 26 H. 8. every Bishop's Suffragan, exercising the Office by the Bishop's Commission, for the better maintenance of his Dignity, may have two Benefices with Cure, 26 H. 8. cap. 14. and note that the Eight pounds value of a Church shall be according to the valuation in the King's Books, and not according to the Improved and just value, 8. Car. 1. C. B. Drake and Hill's Case, Cro. Car. f. 456. there cited to have been so Adjudged.

A Suffragan Bishop capable of plurality.

Note

*The penalty
of Non-resi-
dence.*

Note by the Statute, 21 H. 8. It is enacted that every Spiritual Person promoted to any Arch-deaconry, Deanry, or Dignity in any Cathedral Church, or other Church Conventual or Collegiate, or being Beneficed with any Parsonage or Vicarage, shall be Personally Resident, and abiding in, at and upon his said Dignity, Prebend or Benefice, or at one of them at the least, and in Case that any such Spiritual Person keep not Residence at one of his said Spiritual Dignities, Prebend or Benefices as aforesaid, but absent himself willfully by the space of one Month together, or by the space of two Months to be accounted at several times in any one year, and make his Residence and Abiding in any other places by such times, then he shall forfeit for every such default Ten pounds Sterling, the one half thereof to the King's Majesty, and the other half to the Party that will Sue for the same in any of the King's Courts by Original Writ of Debt, Bill, Plaint, &c. 21 H. 8. cap. 13.

But

But it is provided that this Act of Non-residence shall not in any wise extend nor be prejudicial to any such Spiritual Person as shall chance to be in the King's Service beyond the Seas, nor to any Person or Persons going to any Pilgrimage, or Holy place beyond the Sea, during the time that they shall be so in the King's Service, or in the Pilgrimage going and returning home, nor to any Schollar or Schollars being Conversant and abiding for Study without Fraud, or Covin at any University within this Realm or without; nor to any of the Chaplains of the King's or Queen's, daily or quarterly attending and abiding in the King's or Queen's most Honourable Households; nor to any of the Chaplains of the Prince or Princess; or any the King's or Queen's Children, Brethren or Sisters; nor to any Chaplain of any Arch-bishop or Bishops, or of any Spiritual or Temporal Lords of the Parliament; nor to any Chaplain of any Dutches, Marquess, Countess, Vice-countess, or Baroness; nor to any Chaplain of the Lord Chancellour, or Treasurer of *England*, the King's Chamberlain or Steward of his Household

*Who excuse:
able for Non-
residence.*

hold for the time being; nor to any Chaplain of any of the Knights of the honourable Order of the Garter, or of the Chief Justice of the King's Bench, Warden of the Cinque Ports, or of the Master of the Rolls; nor to any Chaplain of the King's Secretary, and Dean of the Chapel, or Almshouse for the time being, daily attending and dwelling in any of their Honourable House-holds, during the time that any such Chaplain or Chaplains shall abide, and dwell without Fraud or Covin in any of the said Honourable House-holds; nor to the Master of the Rolls, or Dean of the Arches; nor to any Chancellor or Commissary of any Archbishop or Bishop; nor to as many of the Twelve Masters in Chancery, and Twelve Advocates of the Arches, as be spiritual Men, during so long time as they shall continue and occupy their said Rooms and Offices; nor to any such spiritual Persons, as shall happen by Injunction of the Lord Chancellor, or the King's Council to be bound to any daily appearance and attendance, to answer the Law, during the time of such Injunction, 21 H. 8. cap. 13.

There

There is also another Proviso, that it shall be Lawfull for every Spiritual Person or Persons, being Chaplains to the King, to whom he shall please to give any Benefices or Promotions Spiritual, to what number soever it be, to accept and take the same without the danger of the said Statutes and further, that it shall be Lawfull for the King to give Licence to every of his own Chaplains for non residence upon their Benefices notwithstanding the said Act, 21 H. 8. cap. 13. *The King may Licence non residence.*

And by the 25 H. 8. it is enacted, that every Judge of the Courts of King's Bench, and Common Pleas, Chancellor and Chief Baron of the Exchequer, the King's General Attorney, and General Solliciter, may retain and have singularly to every of them in his House, or attending on his Person, one Chaplain, having one Benefice with cure of Souls, which may be absent from his said Benefice, and not resident upon the same, 25 H. 8. cap. 16. And the residence of every Bishop's Suffragan, over the Diocess where he shall have Commillion, shall serve him for his residence, as sufficiently as if he were resident upon any other his Benefice, 26 H. 8. cap. 14. *Who may be non resident.*

The

*Who may be
non resident.*

The Chancellor of the Dutchy of Lancaster, the Chancellor of the Court of Augmentations, the Chancellor of the Court of first Fruits and Tenths, the Master of the Wards and Liveries, and every of the King's General Surveyors of his Lands, the Treasurer of his Chamber, the Treasurer of the Court of Augmentations, and the Groom of the Stool and every of them, may retain in his House, or attendant unto his Person, one Chaplain having one Benefice with cure of Souls, who may be non resident, provided that every of the said Chaplains being Beneficed as aforesaid, and dwelling with any of the Officers aforesaid, do Personally repair two times in every Year at the least, to his said Benefice, and there tarry and abide by the space of eight days, at every such time at the least, to visit and instruct his said cure, upon pain to forfeit for every time so failing, forty shillings, one Moiety to the King, and the other to such as will sue for the same, in any of the King's Courts of Record, 33 H. 8. cap. 28.

*Schollars in
the Univer-
sities, when
excusable for
non resi-
dence.*

Note, that the clause in the 21 H. 8. cap. 13. which saith that the Penalty for non residence, shall not extend to any

any Schollar or Schollars, being Con-
versant, and abideing for study with-
out Fraud or Covin at the Universities,
is restrained and made more strict by
the 28 H.8. for there it is enacted, that
all and singular Spiritual Person and
Persons, which shall be promoted to
any Benefice or Benefices as aforesaid,
being above the Age of forty Years,
(the Chancellor, Vice-Chancellor,
Commissary of the said Universities,
or any of them, Wardens, Deans, Pro-
vosts, Presidents, Rectors, Masters,
Principals, and other head Rulers of
Colleges, Halls, and other Houses or Pla-
ces Corporate, within the said Universi-
ties or any of them, Doctors of the
Chair, Readers of Divinity in the com-
mon Schools of Divinity, in any of
the said Universities only excepted)
shall be resident, and abideing at and
upon one of their said Benefices, ac-
cording to the intent and true meaning
of the said former Act, upon the pain
and Penalty therein contained. And
that none of the said Beneficed Persons
being above the Age aforesaid, except
before excepted, shall be excused of
their non residence, for that they be stu-
dents or resiant within the said Univer-
sities,

sities, or any of them, any Proviso in the former Act, to the contrary notwithstanding, 28 H. 8. cap. 13.

What Students excusable for non residence.

And it is further enacted, that all and singular such Beneficed Persons, being under the Age of forty Years, Resiant, and abiding in the said Universities or any of them, shall not enjoy the Privilege and Liberty of non residence, contained in the Proviso of the former Act, made for the Schollars of the said Universities, unless he or they be present at the Ordinary Lectures, as well at home in their Houses, as in the common School or Schools, and there in Person, keep Sophemes, Problems, Disputations, and other exercise of learning, and be Opponent and Respondent in the same, according to the Ordinances and Statutes of either of the said Universities, where he or they shall be so abiding and resiant, anything in the former Act notwithstanding, 28 H. 8. cap. 13.

Readers of publick Lectures, &c. excusable.

And by the said Statute it is further provided, that nothing therein contained, shall extend to any Person or Persons, who shall be Readers of publick or common Lecture, in Divi-

nity, Law Civil, Physick, Philosophy, Humanity, or of any of the Liberal Sciences, or publick or common Interpreters, or Teachers of the Hebrew Tongue, Caldee or Greek, in whatsoever College or Place of any of the said Universities, the said Persons for the time being, shall reade the said common or publick Lectures, nor to any Person or Persons, above the Age of forty Years, which shall resort to any of the said Universities, to proceed Doctors in Divinity, Law Civil, or Physick, for the time of their proceedings, and Executing of such Sermons, Disputations or Lectures, which they be bound by the Statutes of the Universities, there to doe for the said degrees so obtained, 28 H. 8. cap. 13.

And now having shewed what the Statute Law saith, concerning non residence, I shall proceed to shew what the Judges Opinions have been in such Cases concerning the same as I find in our modern reports: In an Information upon the Statute for non residence, upon non guilty pleaded, a special Verdict was found, that the Defendant was Parson of *Downham* in *Norfolk*, and had a Parsonage House and Glebe Land

Non residence, *wh*
is.

Land within the Parish, but he Inhabited not therein, but in a Coppy-hold Tenement which he had in the right of his Wife in the said Parish, and alwaies served the cure, and whether this were a non residence or no within the Statute was the Question ; And *Gawdy* and *Popham* Justices, held it was not a residence within the Statute, which was made for three causes, first, that the cure should be served, secondly, that the People should be fed, thirdly, that the Parsonage House should be upholden and maintained, and if the Statute should be otherwise construed, many inconveniences would ensue, for Parsons would purchase other Houses within their Parishes, and be alwaies resident upon them, and suffer their Parsonage Houses to decay, and sterilitate their Glebe Land, and meliorate their own Possessions, in prejudice of their Successors, and where the Statute saith he shall be resident upon his Benefice, it shall be intended where there can be residence, for he cannot be resident upon the Tythes, nor upon the Glebe Land where there is not any House, but only his Habitation is within his Parsonage House, but Justice *Clynch* and

and *Fenner* held the contrary, and said if he be resident within his Benefice, (which extends to the whole Parish) it is sufficient, but if he be resident upon any other House adjoyning upon his Parish, but not within his Parish, although every Sunday and Holyday, he serve the cure, yet it is not sufficient, and they said that the intent of the Statute is, that he should *pascere gregem, cibo, exemplo & verbo*, all which he may doe when he is resident in any part of the Parish, and where it is said in, at and upon his Benefice, it is clear that all the Parish is his Benefice, so he is resident in his Benefice, but peradventure, he is not resident upon his Benefice, unless he Inhabits within the Parsonage House, but there are Divers Parsonages which have no Parsonage House, for it may be aliened by the former Parson, with the consent of the Patron and Ordinary, or let out, so as his successor cannot have it, and therefore his residence may be in any other House within the Parish, and it is sufficient; and upon this difference of the Justices in their Opinions, *Crook* reports the Case to be adjourned, and so does *Moore* and *Gouldesborough*, but my Lord *Cook* reporting

K

porting the same Case saith, it was resolved by the Court, that the Parson ought to reside in the Parsonage House, and not in any other House within the Parish, *M. 39, 40 Eliz. B. R. Goodale and Butler's Case, Cro. Eliz. f. 590. pl. 28 M. Rep. f. 540. pl. 712. Gouldes. Rep. pa. 169. pl. 100. & Co. Rep. 6 Lib. f. 21. b. the same Case, but there said to be P. 40 Eliz. and see P. 9 Jac B. R. Shepheard and Twoulsie's Case, Boulstr. Rep. 1 part, f. 111.*

What resi-
dence, and
what not.

Another Information was also brought upon the *stat. 21 H. 8.* for non residence, and it was found by speciall Verdict, that Doctor *Newman* was Incumbent, invested in the Rectory of *Staplebirst*, in the County of *Kent*, and that he was also seized of an House in *Staplebirst* aforesaid, Situate within twenty Yards of the said Rectory, and that the Mansion House of the said Rectory was in good repair, and that Doctor *Newman* held that in his hands, and occupation with his own proper goods, and did not let it to any other, and that he Inhabited in the said Messuage and not in the Parsonage, and whether this were non residence or no was the Question; and it was argued by the Plain-

Plaintiff's Council, that it was non residence, and it is there said, that the Statute was made for seven causes, two of which are for Hospitality, and relief of the Poor, and these are to be done in the Parsonage House, for this is the free Alms of the Church, and so it was adjudged, *B. R. 24 Eliz. in Broom and Hudson's Case*, the Defendant's Council argued to the contrary, but the Case was compounded by the Lord Cook, and so no judgment in it, but he intended this was no residence within the Statute, as the Book saith, *H. 8 Jac. C. B. Canning and Doctor Newman's Case, Brownl. Rep. 2 part, f. 54.*

Upon another Information for non residence, the Defendant pleaded that he was chosen Gospeller in the Church of *S. Pauls, London*, and was resident there by reason of that Dignity, and it was thereupon demurred, and it was said by the Plaintiff's Council, that this was not any Dignity to excuse the Defendant, the Civilians divide spiritual Functions into three degrees, first, a Function which hath a Jurisdiction as a Bishop, Dean, &c. secondly, a Spiritual Administration with a cure, as Parson of a Church, &c. thirdly, they

What a Dignity to excuse non residence.

who neither have cure nor Jurisdiction, as Prebends, Chaplains, &c. and defined a Dignity to be, *Administratio Ecclesiastica, cum Jurisdictione, vel potestate conjuncta*, and thereby they exclude the two last degrees, from being any Dignity, *à multo fortiori*, the Common Law doth so, and to that purpose, *vide* 27 H. 6. 5. 25 E. 3. 41. Br. Nofme 25. that an Archdeacon is not a Name of Dignity, 17 E. 3. 31. A Provost is not a Name of Dignity, 11 H. 4. 40. A Parson is not a Name of Dignity, 14 H. 6. 14. A Presentor is not a Name of Dignity, 27 H. 6. 3. A Chaplain is not a Name of Dignity, 27 H. 8. 10. is if a Vicar of S. Pauls, hath a Benefice with cure, he ought to be resident upon it, and that is a greater Dignity than Gospeller, and of that Opinion were Popham and Clinch, *Ceteris Justiciariis absentibus*, but the cause was adjourned, and afterwards the Defendant compounded, P. 41 Eliz. B. R. Boughton and Gonsley's Case, Cro. Eliz. f. 663 pl. 13.

Information
for non resi-
dence, where
to be brought.

An Information was brought upon the Statute for non residence, before the Justices of Assize, in the County of Essex, and it was resolved it did not lye, but

but only in the King's Courts, where there may be *Essoyn, Gager del Ley*, or *Protection*, *M. 4 Car. 1 B. R. Green and Guye's Case, Cro. Car. f. 146. pl. 26.*

Non obstant
when necessa-
ry.

Note, if a Baron have three Chaplains, and every one of them hath two Benefices apiece, and afterwards the Baron dyes, yet they shall enjoy their Benefices with cure, in which they were Lawfully settled before, but though they continue and abide upon one of the Benefices, yet they may be punished for non residence upon the other, and so it was adjudged in *Parson Boyton's Case*, as the Lord *Cook* reports, therefore saith he, Such Minister ought to obtain of the King, a *non obstante*, so if the Baron dye, be attainted of Treason or Felony, or if any Officer be removed from his Office, who is Capacitated to retain a Chaplain, & sic de similibus, *Co. Rep. 4. Lib. f. 119. d.*

It hath been agreed, that Lawfull Imprisonment without fraud, is a good excuse of non residence, so if there be no Parsonage House, for *impotentia excusat legem*, and these Cases are excepted out of the Act, by Construction of the Law, and it was also held in the *Exchequer, Tr. 19. Elin.* that sickness

Non resi-
dence excu-
sable when.

without fraud is also a good excuse, to wit, if the Patient remove by advice of his Physitian *bona fide*, for better Air, and for the recovery of his health, *Co. Rep. 6 Lib. f. 21. b. Martin's Case, M. 10 Jac. B. R. Boulstr. Rep. 2 part, f. 18.*

Who excusable for non residence by the Canon.

I shall now set down what is required by the Canons in force, concerning Dispensations and non residence, and first it is said, no Licence, or Dispensation for the keeping of more Benefices with cure than one, shall be granted to any, but such only as shall be thought very well worthy for his learning, and very well able and sufficient, to discharge his duty, that is who shall have taken the degree of Master of Arts, at the least, in one of the Universities of this Realm; and be publick and sufficient Preacher Licensed, provided alwaies that he be, by a good and sufficient caution, bound to make his personal residence in each of his said Benefices for some reasonable time in every Year, and that the said Benefices be not more than thirty miles distance asunder, and lastly, that he have under him in the Benefice where he doth not reside, a preacher Lawfully allowed, that

that is able sufficiently to teach and instruct the People, *Can. 41.*

Every Dean, Master or Warden, or Chief Governour of any Cathedral or Collegiate Church: shall be resident in his said Cathedral or Collegiate Church, fourscore an ten days *conjunctim* or *divisim*, in every Year at the least, and then shall continue there in Preaching the Word of God, and keeping good Hospitality, except he shall be otherwise let, with weighty and urgent causes to be approved by the Bishop of the Diocess, or in any other Lawfull sort dispensed with, and when he is present, he with the rest of the Canons or Prebendaries resident, shall take special care, that the Statutes and laudable customs of their Church, (not being contrary to the Word of God, or Prerogative Royal) the Statutes of this Realm being in force, concerning Ecclesiastical Order, and all other Constitutions now set forth, and confirmed by his Majestie's Authority, and such as shall be enjoyned by the Bishop of the Diocess, in his visitation according to the Statutes and customs of the same Church, or the Ecclesiastical Laws of this Realm, be

*Deans, &c.
to keep residence.*

diligently observed, and that the petty Canons, Vicars Coral, and other Ministers of their Church, be urged to study the Holy Scriptures, and every one of them to have the New Testament, not only in *English* but also in *Latin*, *Can. 42.*

*Residence required in
Prebendaries, &c.*

No Prebendaries nor Canons in Cathedral or Collegiate Churches, having one or more Benefices with cure, (and not being residentiary in the same Cathedral or Collegiate Churches) shall under colour of their said Prebends, absent themselves from their Benefices with cure, above the space of one Month in the Year, unless it be for some urgent cause, and certain time to be allowed by the Bishop of the Diocese; And such of the said Canons and Prebendaries, as by the Ordinances of the said Cathedral and Collegiate Churches doe stand bound to be resident in the same, shall so among themselves, sort and proportion the times of the Year, concerning residence to be kept in the said Churches, as that some of them alwaies shall be personally resident there. And that all those who be or shall be residentiaries in any Cathedral or Collegiate Church, shall after the daies

dayes of their Residence appointed by their Local Statutes or Customs expired, presently repair to their Benefices, or some one of them, or to some other Charge where the Law requireth their presence, there to discharge their duties, according to the Law in that Case provided; And the Bishop of the Diocess shall see the same be duly performed and put in Execution, *Can. 44.*

CHAP. VII.

Of the Oath which every Minister is to take before his Institution to a Living, against Simony; with a Recital of the Statute, and some few Cases concerning the same.

INtending in this Chapter to Treat *Simony.* of the detestable sin of Simony as the Canon calls it: I shall first give you the derivation of the word as the Lord Cook defines it, then shew you what the Canon saith concerning it, and how the Parliament of England in the 31 of Queen Elizabeth hath taken care

to prevent it, and lastly the Book Cases upon it.

The Derivation of the word.

Simonis est vox Ecclesiastica, à Simone illo Mago deducta, qui donum Spiritus Sancti pecuniis emi putavit; but this derivation of the word is thought by some to be most properly applicable to such as corruptly give Monies to get into Orders, and not to such as give Monies to be Presented to a Living, *vide C. Inst. 3. part. f. 153.*

The Oath against it.

To avoid the detestable sin of Simony, because buying and selling of Spiritual and Ecclesiastical Functions, Offices, Promotions, Dignities and Livings, is execrable before God, therefore the Archbishop and all and every Bishop or Bishops, or any other Person or Persons having Authority to Admit, Institute, Collate, Install, or to Confirm the Election of any Arch-bishop, Bishop, or other Person or Persons to any Spiritual or Ecclesiastical Function, Dignity, Promotion, Title, Office, Jurisdiction, Place or Benefice with Cure, or without Cure, or to any Ecclesiastical Living whatsoever, shall before every such Admission, Institution, Collation, Installation, or Confirmation

on of Election, Respectively Minister to every Person hereafter to be Admitted, &c. the Oath in manner and form following, the same to be taken by every one whom it concerneth in his own Person and not by Procter :
*I N. N. do Swear that I have made no Simoniackal Payment, Contract or Promise, directly or indirectly, by my self, or by any other to my knowledge, or with my Consent to any Person or Persons whatsoever, for or concerning the procuring and obtaining of this Ecclesiastical Dignity, Place, Preferment, Office or Living, (respectively and particularly naming the same, whereunto he is to be Admitted, Instituted, Col-
 lated, Installed or Confirmed) nor will at any time hereafter perform or satisfie any such kind of Payment, Contract or Promise, made by any other without my knowledge, or consent, so help me God through Jesus Christ,*
 Can. 40.

By the 31. Eliz. it is Enacted, That if any Person or Persons, Bodies Politick and Corporate, shall or do for any Sum of Money, Reward, Gift, Profit or Benefit, directly or indirectly, or for or by reason of any Promise,

*The Penalty
 of Symonia-
 cal Contract*

Agree

Agreement, Grant, Bond, Covenant or other Assurance of or for any Sum of Money, Reward, Gift, Profit or Benefit whatsoever, directly or indirectly Present or Collate any Person to any Benefice with Cure of Souls, Dignity, Prebend or Living Ecclesiastical, or give or bestow the same, for or in respect of any such corrupt cause or consideration, That then every such Presentation, Collation, Gift and Bestowing, and every Admission, Institution, Investiture and Induction thereupon shall be utterly void, frustrate, and of none effect in Law. And that it shall and may be Lawful to and for the Queens Majesty, Her Heirs and Successors to Present, Collate unto, or Give or Bestow every such Benefice, Dignity, Prebend and Living Ecclesiastical, for that one time or Turn only; And that every Person or Persons, Bodies Politick and Corporate, that from thenceforth shall give or take any such Sum of Money, Reward, Gift, or Benefit directly or indirectly, or that shall take or make any such Promise, Grant, Bond, Covenant, or other Assurance, shall forfeit and loose the double value of one years profit of every

every such Benefice, Dignity, Prebend, and Living Ecclesiastical; And the Person so corruptly taking, procuring, seeking or accepting any such Benefice, Dignity, Prebend or Living, shall thereupon and from thenceforth be Adjudged a disabled Person in Law, to have or enjoy the same Benefice, Dignity, Prebend, or Living Ecclesiastical, 31 Eliz. cap. 6.

And it is further Enacted, That if any Person for any Sum of Money, Reward, Gift, Profit, or Commodity whatsoever directly or indirectly (other than for usual and Lawful Fees) or for, or by reason of any Promise, Agreement, Grant, Covenant, Bond, or other Assurance, of or for any Sum of Money, Reward, Gift, Profit, or Benefit whatsoever, directly or indirectly Admit, Institute, Install, Induct, Invest or Place any Person in, or to any Benefice with Cure of Souls, Dignity, Prebend or other Living Ecclesiastical, That then every such Person so offending, shall forfeit and loose the double value of one years profit, of every such Benefice, Dignity, Prebend, and Living Ecclesiastical; And that thereupon immediately from and after the Investing

*The Penalty
of Simonia-
cal Admissi-
ons, &c.*

vesting, Installation or Induction thereof had, the same Benefice, Dignity, Prebend and Living Ecclesiastical shall be meerly void; And that the Patron or Person to whom the Advowson, Gift, Presentation or Collation shall by Law appertain, shall and may by virtue of the said Act, Present, or Collate unto, Give and dispose of the same Benefice, Dignity, Prebend or Living Ecclesiastical, in such sort to all Intents and Purposes, as if the Party so Admitted, Instituted, &c. had been or were Naturally dead, 31 Eliz. cap. 6.

*The Penalty
of Corrupt
Resignation.*

And it is likewise Enacted, That if any Incumbent of any Benefice with Cure of Souls, do or shall corruptly Resign or Exchange the same, or corruptly take for or in respect of the resigning or exchanging of the same, directly or indirectly, any Pension, Sum of Money, or Benefit whatsoever, That then as well the Giver as the Taker of any such Pension, &c. shall lose double the value of the sum so given, taken or had, the one Moiety thereof, as also of the forfeiture of double value of one years profit before mentioned, to be to the Queens Majesty Her

Her Heirs and Successors, and the other to him or them that will Sue for the same in any of Her Majesties Courts of Record by Action of Debt, &c. But note that no Lapse accreus upon any Avoidance by this Act, till after Six Months after notice given of such Avoidance by the Ordinary to the Patron; neither doth it take away or restrain the power of the Laws Ecclesiastical in such Cases, 31 Eliz. cap. 6.

It is also Enacted concerning voices The Penalty of corruption in voices, &c. in Colleges, &c. That if any Person or Persons, Bodles Politick or Corporate, which have Election, Presentation, Nomination, Voice or Consent in the Choice, Election, Presentation or Nomination, of any Fellow, Schollar or other Person, to have Room or Place in any of the Churches, Colleges, Schools, Hospitals, Halls or Societies within this Realm, shall have, receive, or take any Money, Fee, Reward, or any other profit directly or indirectly, or shall take any Promise, Agreement, Covenant, Bond or other Assurance to receive or have any Money, &c. directly or indirectly, either to him or themselves, or any other of their or
any

any of their Friends for his or their Voice or Voices, Assent or Assents, or Consents in Electing, &c. any Officer, Fellow, Schollar or other Person to have any Room or Place in any of the said Churches, Colleges, &c. shall be void; And that then as well the Queens Majesty, Her Heirs and Successors, and every other Person or Persons, and their Heirs and Successors, to whom the Presentation, Donation, Gift, Election or Disposition shall of Right belong or appertain, of any such of the said Rooms or Places of the said Person offending as aforesaid, shall or may at their pleasure Elect, &c. any other Person or Persons in the Room or Place of such Person or Persons so offending, as if the said Person or Persons so offending were then Naturally dead, 31 Eliz. cap. 6.

*The Penalty
of corrupt
Resignation
of a Fellow-
ship, &c.*

Also if any Fellow, Officer or Schollar of any of the said Churches, Colleges, &c. or other Persons having Room or Place or any of the same, shall directly or indirectly take or receive, or by any way, device, or means, contract to agree or have, or receive any Money, Reward or Profit whatsoever, for leaving or Resigning up of
the

the same his Room or Place, for any other to be placed in the same, That then every Person so taking or Contracting, or agreeing to take or have any thing for the same, shall forfeit and lose double the sum of Money or value of the thing so received, &c. And every Person so giving Money &c. shall be incapable of that Place or Room for that time or Turn, and shall not be taken to be a Lawful Fellow, &c. to have such Room or Place there; but they to whom it shall appertain may Elect, &c. another fit Person into the same Room or Fellowship, as if the said Person so giving Money, &c. were Naturally dead, or had Resigned and Left the same.

And for more sincere Election, &c. The Statute to be read every Election, &c.
 of Fellows, Schollars, Officers, and other Persons to have room or place in any of the same Churches, Colleges, &c. At the time of every such Election, Presentation or Nomination as aforesaid to be had, as well the said Statute of 31 Eliz. as the Orders and Statutes of the same places concerning such Election, &c. shall then and there be publickly read; upon pain that every Person in whom default shall be made, shall

shall forfeit Forty pounds, all which Forfeitures shall be Sued for and Recovered in any of Her Majesties Courts of Record, by any Person or Persons, Bodies Politick or Corporate that will Sue for the same, one Moiety to the Party Sueing, and the other to the use of the College, &c. where such Offence shall be committed, 31 Eliz. cap. 6.

*Simoniackal
Contract
makes the
Presentation
void, &c.*

Note, that by this Statute if any Clerk comes to a Living upon a Simoniackal Contract, whether he be privy to it or no, it makes the Presentation, Admission, Institution and Induction all void, whereas before the said Statute they were but voidable by deprivation; And if a Man by Usurpation present to a Benefice, by reason of any corrupt Contract, Agreement, &c. that Presentation and the Institution and Induction thereupon are void, for the Act extends to all Patrons as well by wrong as by right, with this difference, that where any presents by Usurpation, the Right Patron and not the King shall present, for otherwise every Rightful Patron may lose his Presentation; And such an Incumbent that cometh in by the Lawful Patron,
by

by reason of any such corrupt Agreement, if he be privy to the same, is so absolutely disabled for ever after to be presented to that Church, as the King himself to whom the Law giveth the Title of Presentation in that Case, cannot present him again to that Church, for the Act being made for suppression of Simony and such corrupt Agreements, so binds the King in that Case, that he cannot present him that the Law hath disabled; for the words of the Statute be, shall thereupon, and from thenceforth be Adjudged a disabled Person in Law to have or enjoy the same Benefice; And the party being disabled by the Act of Parliament which (being an absolute and direct Law) the King cannot dispense therewith no more than with the Common Law, by any Grant, &c. with a *Non obstante*, as he may do when any thing is Prohibited *sub modo*, as upon a penalty given to the King, or to the King and the Informer; but if the Incumbent were not privy to, or did know of the corrupt Agreement, &c. then he shall not be accounted a disabled Person within the said Act to be presented *de novo*; And note that
this

this Act doth not only extend to Benefices with Cure, but to Donatives, Dignities, Deanries, Prebends and all other Ecclesiastical Livings, *Co. Lit. f. 120. a. Co. 3. part, Inst. f. 153, 154, 155. & vide M. 42. 43. Eliz. C. B. Rot. 3333. Baker and Roger's Case, Cro. Eliz. f. 788. pl. 30. and M. Rep. f. 914. pl. 1292. see also M. 13. Jac. B. R. the King and Bishop of Norwich, and Cole and Saker's Case, Roll's Rep. 1. part, f. 235. pl. 7. Cro. Jac. f. 385. pl. 16. Hob. Rep. f. 75. & Boulstr. Rep. 3. part, f. 88. vide Plo. Com. f. 502. 2. H. 7. 6. 11. H. 7. 11. Hetlye's Rep. f. 51. & M. 9. Car. 1. B. R. Bawderdicke and Mackallier's Case, Cro. Car. f. 330. pl. 15. M. 10. Jac. Stamford and Hutchinson's Case, Cro. Rep. 12. Lib. f. 101.*

*A Wife may
Contract Si-
mony.*

If one Contract with the Wife of the Patron to be presented for Money, and is presented accordingly by the Husband, this is Simony within the Statute 31 Eliz. and makes the Presentation void, for 27 H. 8. 26. the Contract of the Wife is the Contract of the Husband, and 30 Eliz. 3. 39. he ought to declare accordingly, and if the Contract be made with the Patron

tron by a meer Stranger, it makes the Presentation void; *Roll's Rep. 1. part, f. 236. Cro. Jac. f. 385. Boulstr. Rep. 2. part, f. 182. & 3. part, f. 90.*

Simony is odious in the Eye of the Common Law, for a Guardian in Socage of a Mannor whereunto an Advowson is appendant, shall not present to the Church, because he can take nothing for the Presentation, for the which he may account to the Heir, and therefore the Heir in that Case shall Present of what Age soever he be; and the Common Law would have the Patron so far from Simony, as it denied him to Recover Damages in a *Quare Impedit*, or Affize of Darrein Presentment before the Statute of *Westminster, 2. cap. 5.* and it is the more odious because it is ever accompanied with Perjury, for the Presentee is Sworn to Commit no Simony, as appears by the Oath before mentioned in this Chapter; *vide Co. Inst. 3. part, f. 196. F. N. B. 33. T. 7. E. 3. 39. a. Co. 2. part, Inst. f. 362, 363. & Co. Rep. 6. Lib. f. 51.* and it hath been agreed by the Court of Common Pleas that Simony is most properly Triable in the Spiritual Court; *M. 40. Eliz. C. B.*

Guardian in Socage cannot Present.

C. B. Reishye and Wentworth's Case, Cro. Eliz. f. 642. pl. 42. M. 3. Jac. Close Case; M. Rep. f. 777. pl. 1077.

*A contract
when the
Parson is
sick, is Si-
mony.*

Note, that it hath been held, and so adjudged in Chancery as the Book saith, That if a Man obtain a grant of the next avoidance for money, when the Parson is sick in his Bed ready to dye, it is Simony, for the Statute is, if the contract be made directly or indirectly, by any way or means, P. 21 *Jac. C. B. Shelden and Bret's Case, Winch Rep. f. 63. and see P. 4 Jac. C. B. Rot. 1926. Winchcombe and Bishop of Winchester and Puleston's Case, M. Rep. f. 877. pl. 1231. Noye's Rep. f. 25. & Hob. Rep. f. 165.*

*Bonds, &c.
for mo eys
not void.*

In Case where Bond, or other assurance, promise, &c. is made for moneys, to be presented to a Benefice, though the Simoniacall contract, make the Presentation, &c. void, yet the Statute doth not make the Bond, Promise, &c. for the money void, and so it was adjudged, P. 40 *Eliz. C. B. Rot. 1745. in Gregory and Oldbury's Case, cited by the Lord Cook, in the Margin of his 3 part, Inst. f. 153 M. Rep. f. 564. pl. 769. & Boultr. Rep. 2 part, f. 182.*

Note

Note this Case following, where a contract was made with the Patron, for the next avoidance, the Parson being then sick, and yet adjudged no Simony, as *Crook* reports it, the Case was this, the Father of one *Smith*, came with his Son to the Patron, the Parson being then sick, and in the presence of his Son, contracted with the Patron for the next avoidance to the Church, for 100 pounds, who thereupon made a grant thereof, the Parson afterwards dyes, and the Father presents his Son, who is Admitted, Instituted and Inducted into the Living, and was sued in the Spiritual Court to be deprived for Simony, and thereupon a Prohibition was granted, and it was adjudged to be no Simony, and the reasons there given are, that the Father might buy the Advowson, and present his Son, and it is no Simony, in any to buy an Advowson. And although the Son here was privy thereto, yet it is not material, for it being no offence in the Father, who was Principal, it cannot be an offence in the Son, who is but Accessary; for there cannot be a *particeps criminis*, where there was not any crime committed, but if the Parson him-

himself had contracted for a Benefice, to the intent another should present him, that is Simony; But the Father is bound by Nature to provide for his Son, and therefore his buying an Advowson to the intent to provide for his Son, is not any Simony, and of this Opinion were three of the Justices, but *Anderson* was of a contrary Opinion, but was over ruled by the other three, *P. 41 Eliz. C. B. Rot. 1001, Smith and Shelbourn's Case, Cro. Eliz. f. 685. pl. 21.* but this same Case being reported by *Moore, f. 916. pl. 1299.* he saith that it was clearly agreed to be Simony, but all the Justices, except *Anderson*, held it to be no Simony if the Son had not been privy to the bargain, *Ideo Quere, & vide 39 Eliz. Buck's Case, & 3 Jac. Freeman and English's Case, Hughes cap. 16. P. 3. Car. 1. B. R. Rot. 362. Godb. Rep. f. 390. pl. 475. & f. 435. pl. 500. Noye's Rep. f. 25.*

What con-
trast no Si-
mony.

In an Ejection firm the point was, the Patron takes an Obligation of the Clerk, (which he presented) that he should pay ten pounds yearly to the Son of the last Incumbent, so long as he should be a Student in *Cambridge* unpre-
ferr'd: And this was adjudged to be

no Simony, but if it had been to have paid ten pounds to the Son of the Patron, &c. then it had been Simony. And Justice *Foster*, vouched the Earl of *Sussex's* Case, an Obligation made by the Presentee to the Patron, to pay fifty pounds yearly to the Wife and Children of the last Incumbent, and held to be no Simony, *Baker* and *Mountford's* Case, *Noye's Rep. f. 142.*

And if a Father in Law, upon the Marriage of his Daughter, Covenant with his Son in Law, without any consideration but voluntarily, that he will procure him to be Presented, Admitted, Instituted, and Inducted into such Benefice upon the next avoidance of the same Church, this is no Simony, but if such a Covenant had been made in consideration of Marriage of his Daughter, &c. or other consideration that he would procure him to be presented, &c. to such a Church that had been a Simoniackal contract, *M. 11 Car. 1. B. R. Birte* and *Manning's* Case; *Cro. Car. f. 425. pl. 16.*

In debt upon an Obligation for a thousand Marks, the Case was thus, that whereas the Obligee had procured from Queen *Elizabeth*, Letters of Presentation

What Covenant no Simony.

Obligation to resign no Simony.

sentation to the Church of *Sretbam*, to which he intended to present his Son, breeding him a Schollar after he should attain the Age of 24 Years, and in the mean time presented one *Lawrence*, and after Institution and Induction, &c. took the Bond abovesaid of him, that if after his Son was of Age and Capacitated, he should absolutely resign the said Benefice within three Months after request to him made, then the Obligation to be void, otherwise to remain in full force and virtue; to this the Defendant *Lawrence* pleaded *non requisitus*, which upon the Tryal was found against him, and it was moved in Arrest of Judgment, that it appeared by the condition of the Bond, to be a Simoniacal contract, and against Law, and therefore the Obligation void, but notwithstanding, the Court gave Judgment for the Plaintiff; And afterwards a Writ of Error being brought, the Principal Error insisted upon was that this condition is against Law, being for Simony, but all the Judges of the Common Pleas, and Barons of the Exchequer held, that the Obligation and condition were good enough; for a Man may bind himself to

to resign and it is not unlawfull, but may be upon good and valuable reasons without any colour of Simony; as to be obliged to resign if he take a second Benefice, or if he be non resident by the space of so many Months, or as this Case is to resign upon request, if the Patron will present his Son thereto when he should be capable to take it. But if it had been averred, that it was *per calorem Simonii*, viz, if he did not suffer the Patron to enjoy a Lease of the Glebe or Tythes, or if he did not pay such a sum of money, that had been Simony, and it is possible might have made the Obligation void, but in this Case there is no such thing, and so adjudged no Simony, *Tr. 8 Jac. Rot. 1130. B. R. Jones and Lawrence's Case, Cro. Jac. f. 248. pl. 8. & 274. pl. 2.*

Also in *Hill. 15 Car. 1.* an action of debt brought upon a Bond conditioned whereas the Plaintiff intended to present the Defendant to such a Benefice, that if at any time, after his Admission, Institution and Induction, at the Plaintiff's request he should resign the said Benefice into the hands of the Ordinary, that then &c. upon Oyer of the condition, the Defendant demurred

Bond to resign no Simony, without averment, &c.

generally, &c. and upon argument his Council shewed, that the condition being to resign when the Patron should request, it was Simony and against Law, and so the Bond void, but all the Court held the contrary, but if it had been averred, that the Obligation was made *per colorem Simonii*, as to bind the Presentee to pay such a sum of money, or to make a Lease of the Tythes, or other Act which appears in it self to be Simony, then upon such a Plea, peradventure it might have appeared to the Court to have been Simony, and so the Bond questionable; But as it is here it doth not appear, that there is any Simony, for such a Bond to cause him to resign, may be good and upon good reason and discretion required by the Patron, *viz.* if he be not resident, or takes a second Benefice by Qualification, &c. or intended to present his Son when qualified as in the last Case, and for these reasons, judgment was given for the Plaintiff; *H. 15 Car. 1. B. R. Babington and Wood's Case, Cro. Car. f. 180. pl. 4. Hut. Rep. f. 110 & Jone's f. Rep. 220. pl. 1. & vide M 43, 44 Eliz. C. B. Webb and Hargrave's Case, M. Rep. f. 641. pl. 883.*

Indeed

Indeed there is a Case in *Noy*, where it is said, that the Court held it to be Simony, where the Patron had presented one, and taken Bond of him, to resign when the Patron pleased, after three Months warning, but the reasons are not set down in the Book, so I suppose the condition hath been general to resign and averment made by the Presentee, that it was *per colorem Simonii*, &c. as is shewed before, *Tr. 15 Jac. C. B. Rot. 2051. Sir John Pascal and Clarke's Case, Noye's Rep. f. 22.*

*Averment
requisite to
make a Bond
Simonical.*

There is also another Case in *Roll's*, which contradicts this in *Noy*, besides the two beforementioned, so that it can be of no great Authority, the Case was thus, *A.* was bound to *B.* that whereas *A.* within a short time was to be Presented, Instituted and Inducted into a Benefice, if therefore after his Admission, Institution and Induction at all times, upon request of *B.* his Heirs, Executors, or Administrators, he should resign the same to the Ordinary or Guardian of the Spiritualities for the time being, so that *B.* his Heirs, or Assigns, Patrons of the said Church, may present anew to the same, discharged of all Incumbrances, made or suffered by *A.* then the

*Bond to re-
sign no Si-
mony, &c.*

same Obligation to be void, otherwise, &c. and this upon demurrer, was held to be a good condition, without averment, that it was for a Simoniackal purpose, for otherwise it doth not appear to the Court to be so, and there is a difference between *malum in se*, against the Common Law, and *malum prohibitum*, by Statute Law, or by the Civil or Canon Law, whereof the Judges at Common Law take no notice; and it is there further said, that if the condition were that after the Institution and Induction into the Church, the Obliger shall at all times afterwards be Ordinarily resident, and serving the cure of the said Benefice without absence, by 80 daies in any one Year, during the time that he shall be Parson there, this is a good condition, without any averment to be taken for any Simoniackal purpose. *M. 14 Car. 1. B. R. Carey and Teo's Case, Intratur H. 13 Car. 1 Rot. 445. Roll's Cases, 1 part, f. 417. U. 1, 2. & vide Co. Inst. 3 part, f. 153. in the Margin.*

*Simoniackal
promise void.*

A Parson did promise a Man, that if he would bestow his labour and pains to procure him to be Presented, Instituted and Inducted into the Chapel of the

the *Tower*, being then void, and a Donative in the King's Gift, that he would pay him twenty pounds upon request, whereupon he did procure him to be presented, &c. to the same, and then required his money, which the Parson refused to pay, and thereupon he brought his Action in the Court of the *Tower of London*, and had a Verdict and Judgment for the money, upon which the Parson brought a Writ of Error, and it was agreed that the Judgment was Erronious, for the consideration was Simoniacal and against Law, and no good consideration, and therefore the promise not good, and so the Judgment was reversed, as Justice *Jones* reports it, but in Justice *Crook's* reports, it is there said, that the Declaration was held not to be good, for the Plaintiff had laid the promise to pay after the Defendant was Rector, and shews that he was Rector by his procurement upon the said promise, which could not be, for he was never Rector, but a Person utterly disabled to be a Parson by this Simoniacal contract, as by the 13 *Eliz.* for not reading the Articles of Religion, *M. 9 Car. 1 B. R. Mackaller and Todderick's Case, Jones's Rep.*

Rep. f. 341. pl. 1 Cro. Car. f. 337. pl. 24. & 353. pl. 18. & 361. pl. 2. and Roll's Cases, 1 part, f. 18.

*The King's
turn lost
when.*

If a Clerk be Presented by Simony, and be Instituted and Inducted into the Living, and dye possessed thereof, yet this doth not take away the King's turn, but he may present after the Incumbent's Death, if he please, but if the Incumbent in his Life time resign or the like, and a new Clerk were presented and dyed, then the King's turn had been lost; and if a Patron contract with one for Simony, and then present another without Simony, the King gains nothing, for there must be an actual, though not an effectual Presentation; but if once the Patron have presented by Simony, the King is straightwaies Interested, (though no Admission follow) by the express words of the Statute; but where the Patron is Innocent, and the Simony begins in the Institution and Induction, there the Church is void from the Induction only, and the Patron shall present *de novo* (because no fault in him) and not the King; And so where a Clerk gets Orders by Simony, and obtains a Living within Seven Years Lawfully,

Lawfully, in this Case it is void from the Induction, as if he were Dead, and the Patron shall present again and not the King, see *P. 14 Jac. C. B. Rot. 1026 Winchcome* and Bishop of *Winchester* and *Puleston's Case, Hob. Rep. f. 165, 166, 167. Noye's Rep. f. 25. & M. Rep. f. 877. pl. 1231.*

If one who hath the grant of the next avoidance to a Church present by ^{Presentment by Simony,} Simony, and his Clerk is received, he ^{serves for a} shall never present again, as taking this ^{turn.} to be void, and so his turn to remain, for as to him it is full, and he shall not disable his own Act: And if a Parson who comes in by Simony, sue for Tythes in the Ecclesiastical Court, or for his treble damages at Common Law, his Parishioners may plead him no Parson because of his Simony; for otherwise, if the King should present and his Clerk be received, he must not pay both, and to whom he shall pay, it is at his peril upon the Simony or not, and if the Ordinary refuse his *Plea*, he may have a Prohibition, for it is made void by a Statute Law, by which the Spiritual Courts are bound, *Hob. Rep. f. 168. Noye's Rep. f. 25. and see Tr. 10. Jac. C. B. Dr. Hutchinson's*

L 5 Case,

son's Case, Godb. Rep. f. 202. pl.
288.

*Precipitate
Admissions,
&c. to be
avoided.*

Note, that the Clause of the Act of Parliament (mentioned before in this Chapter) which saith, that if any Person shall for any sum of Money, &c. other than for usual Fees, Admit, Institute, &c. that every Person so offending shall lose double value, of one years profit of every such Benefice, &c. and that immediately after the Induction such Benefice shall be meerly void, &c. was made as the Lord Cook saith (who was a Member of that Parliament) to avoid hasty and precipitate Admissions, Institutions, &c. to the prejudice of them that have Right to present, by putting them to a *Quare Impedit*, for no such hast or precipitation is used but for Reward, &c. as it is to be presumed; for there be two great Enemies to Justice and Right, viz. *Precipitatio*, & *morosa Cunctatio*, and although the Church be full by the Institution, &c. against all but the King, yet the Church becometh not void by this branch of this Act, untill after Induction, neither doth it Incapacitate the Clerk from whom such sum of Money or Reward was

was exacted above the usual Fees, but that he may be presented again to the same Living; and in all the Cases before mentioned, where it is said that they shall forfeit and lose the double value of one years profit, &c. this shall be accounted according to the true value, as the same Living may be Letten, and shall be Tryed by a Jury, and not according to the Extent or Taxation of the Church, whereof one was made both of the Spiritualities and Temporalities in the 28 E. 1. Anno Dom. 1292. in the time of Pope Nicholas the Third, and the other in the 26 H. 8. Anno Dom. 1535. in the time of Pope Paul the Third, but this last Taxation (which is now the Rule they go by in the First Fruits Office) was made after the Popes Authority was denyed here in England, vide Ca. 3. Inst. 3. part, f. 154.

C H A P. VIII.

Of the First Fruits, Tenths, Dilapidations, and Mortuaries.

*Court of the
First Fruits
dissolved.*

OBserve that in the time of H. 8. when the First Fruits were annexed to the Crown, there was a Court of First Fruits and Tenths instituted and appointed by the 32 H. 8. cap. 45. consisting of a Chancellor, Treasurer, King's Attorney, two Auditors, and two Clerks, a Messinger and an Usher, with Authority given to Compound for First Fruits, and that Bonds taken therefore should be of the force of a Statute Staple; but this Court was Dissolved by Queen Mary, 1. Mar. 2. Sess. cap. 10. and all the Clergy Exonerated and Discharged from the payment of First Fruits and Tenths given to the Crown by the 26 H. 8. cap. 3. and this was Enacted by 2. & 3. p. M. cap. 4.

*First Fruits
Restored to
the Crown.*

But afterwards the Stat. 26 H. 8. cap. 3. was revived, and First Fruits and Tenths of the Clergy Reunited to the Crown, by 1 Eliz. cap. 4. but no Court

Court is revived, but First Fruits and Tenths to be within the Rule, Survey and Government of the Exchequer, and a new Office and Officer was Created, *viz.* a Remembrancer of the First Fruits and Tenths of the Clergy, who taketh all Compositions for the First Fruits and Tenths, and makes process against such as pay not the same; and note that the First Fruits, are the profits for one whole year, of every Spiritual Living after Avoidance (except Vicarages not exceeding Ten pounds, and Parsonages not exceeding Ten Marks in the King's Books according to the Taxation made in the 26 H. 8. and now remaining in the Exchequer) but all are to pay Tenths, 1 *Eliz. cap. 4. Cs. Inst. 4. part, f. 120.*

By the Stat. 26 H. 8. it is Enacted ^{First Fruits given to the King.} that the King's Highness, His Heirs and Successors Kings of England shall have and enjoy from time to time to endure for ever, of every such Person and Persons as shall be Nominated, Elected, Preferred, Presented, Collated, or by any other means appointed to have any Arch-bishoprick, Bishoprick, College, Hospital, Arch-deaconry, Deanry, Provost-ship, Prebend, Parsonage,

sonage, Vicarage, or other Dignity, Benefice, Office, or Promotion Spiritual within this Realm, or elsewhere within any of the King's Dominions, of what Name, Nature or Quality soever they be, or to whose Foundation, Patronage or Gift soever they belong, the First Fruits, Revenues and Profits for one year of every such Arch-bishoprick, Bishoprick, &c. And that every such Person and Persons before any Actual or Real possession or meddling with the Profits thereof, shall satisfie, content and pay, or compound or agree to pay to the King's use at reasonable dayes, upon good Suerties the said First Fruits and Profits for one year; and all Writings Obligatory taken or the payment of the same, by any Person deputed to Compound for the First Fruits, shall be of the same strength, quality and force, to all Intents, as Writings Obligatory made by any Lay Person by Authority of the Statute Staple; And if any Person or Persons aforesaid do enter into the real and actual possession of any of the Dignities or Spiritual Promotions aforesaid, and meddle with the Profits thereof, before they have satisfied the First Fruits,

Fruits, or compounded and given Sureties as aforesaid to pay the same: Then every such Person so offending, and being Convicted by Presentment, Verdict, Confession or Witnesses before such as have Authority to Compound the same, shall be taken as an Intruder upon the King's Possession, and they their Heirs, Executors or Administrators shall pay double the value of the said First Fruits and Profits of such Dignity, &c. wherein they shall so enter before Payment or Agreement for the same; but Arch-bishops and Bishops and all other having Ordinary Jurisdiction, may give and deliver Letters of Institution and Induction as they might do before the making of the said Act, notwithstanding the same, 26 H. 8. cap. 3.

And it is also further Enacted by the said Statute, that there shall be paid yearly for ever to the King, His Heirs and Successors, one yearly Rent or Pension amounting to the value of the Tenth part of the Profits of all and every Benefice or Promotion Spiritual, &c. as aforesaid according to the Taxation in the King's Exchequer aforesaid, to be paid yearly before the
Tenths given to the King.
first

first day of *April*, and every Arch-bishop and Bishop within their proper Diocess, as well within places exempt as not exempt, and in time of Vacation the Dean and Chapter of the Cathedral Church, shall Collect and Receive the same, and pay in the said Sums yearly before the last day of *May*, 7 E. 6. cap. 4. to such Persons as have Authority to receive the same; And every of the said Arch-bishops and Bishops, their Executors and Administrators and Possessions of their Dignities and Churches, shall stand Charged and Chargable for the same Sums of Money which they shall Collect and Receive of the said yearly Rent or Pension; and the Bishop of *Norwich* and his Successors, and in the time of Vacation the Dean and Chapter of the Cathedral Church of *Norwich* are to gather the same within that Diocess, by the Statute 32 H. 8. cap. 47. and the Rents and Penlions reserved by H. 8. out of the Five new Bishopricks Established by him, to wit, *Chester, Gloucester, Peterborough, Bristol* and *Oxford*, which by the 34 and 35 H. 8. c. 17. were to be paid into the Court of First Fruits and Tenths, are made payable by the 1 *Elix.* to the same Persons

Persons who receive the First Fruits and Tenth of the other Clergy, 1 Eliz. c. 4.

And by the 26 H. 8. cap. 3. It is further Enacted, That the Treasurer, Chancellor and Barons of the King's Exchequer, shall yearly cause Process to be made by their Discretions for Non payment of the Tenth or any part thereof, against every Arch-bishop and Bishop of this Realm, for so much as the Dignities, Benefices, &c. within their several Diocesses are Taxed and Charged at; every of the said Arch-bishops and Bishops to be Charged only for so much as is within his own Diocess; And the Arch-bishops and Bishops have Power and Authority by the said Act, to levy, take and perceive by Authority of Censures of the Church, or by Distress or otherwise by their Discretion, all such Sums of Money as are Rated for the said Tenth, upon the Lands, Tenements, Profits, &c. of all such Spiritual Promotions as aforesaid within their Diocess; And no Replevin, Prohibition nor *Superedeas* upon any Excommunication, nor any other Writ or Impediment shall be Sued, Allowed or Obeyed for any Person or Persons making default of

Process to be made out for non-payment of Tenth.

of payment of such part and portion as they shall be Rated at, till such time as they have truly satisfied their said Part and Portion; And in Case where the Tenths are due, and being reasonably demanded at their Dignities, Churches or Houses, &c. by the Arch bishop or Bishop or such as shall be charged with the Collection thereof, or by any other their Ministers, Servants or Officers, and be not paid at the time of such Demand or Request or within Forty dayes after at the furthest, that then every Incumbent making such default of payment, after such default certified into the King's Exchequer in Writing under the Seals of any Arch-bishop or Bishop, or of such as be charged to the Collection of the said Pension, shall be Adjudged deprived *ipso facto* of that only Dignity, Benefice, &c. whereof such Certificate shall be made, as if the said Incumbent were dead, 26 H. 8. cap. 3. 2. E. 6. cap. 20. 1 Eliz. cap. 4. & vide p. 7. Eliz. C. B. Dyer, f. 237. a. pl. 29.

How Bishops,
&c. may be
discharged of
Tenths.

And every Arch-bishop and Bishop or any other having Authority to Receive the Tenths, making a Certificate into the Exchequer before the last day

of

of May (by the Statute 7 E. 6. cap. 4.) that they have reasonably demanded the Tenths of any Incumbent of any Dignity, Benefice, &c. due for him to pay, and that he hath not paid the same, or that such Benefice remains void and no Incumbent can be had, shall be a discharge to every such Arch-bishop and Bishop or other having Authority to receive the Tenths, for so much as such Incumbent or Benefice being void ought to pay; And the Treasurer, Chancellor and Barons of the King's Exchequer shall devise and direct upon every such Certificate, such Process out of the said Court, against every Incumbent so Certified and their Executors and Administrators for Insufficiency of them, against the Successors of every such Incumbent; so that the King may be truly Answered the said Tenths for such Dignity, &c. and may Levy and take all the Glebe Lands, Tithes, &c. of the Benefice being vacant to which no Incumbent can be had to satisfy himself, 7 E. 6. cap. 4. also where the said Arch-bishop, Bishop or other Accountants charged with the Collection of Tenths, make Oath before the Treasurer

Treasurer, Barons and Chancellor of the Exchequer or the Major part of them, or before such other Persons as have power to hear such Accompt, that they cannot or may not for some sufficient Cause or matter lawfully Levy the Tenths which they stand charged in Accompt, then upon such Oath made they shall be discharged for so much, 32 H. 8. cap. 22.

Acquittances for Tenths by whom to be made, &c.

Acquittances made by such as have power to receive Tenths or any part thereof, to such Person or Persons who are charged with the Collection thereof, shall be of as good strength, force, virtue and effect to the parties having the same, as if they were made in the King's Name under his Great Seal, and shall be allowed, admitted and accepted in all Courts of this Realm, and no Officer of the Exchequer shall take any matter, thing or reward of any Arch-bishop or Bishop, or of any other Persons having Charge with the Collection and Payment of Tenths for making their Accompt or *Quietus est*, upon pain to lose his Office, and make Fine to the King at his will and pleasure, 26 H. 8. cap. 3. 1 Eliz. cap. 1.

By

By the 27 H. 8. the Tenth^s are to be paid by every Arch-bishop, Bishop, &c. the first year they enter on their Spiritual Dignities, Benefices, &c. and they are to have allowance thereof in the payment of their First Fruits; and where any Incumbent is chargeable with the Arrears of his Predecessors Tenth^s, in such Case he may distrain such Goods and Chattels of his Predecessors as shall happen to be and remain in and upon the Dignity, Benefice, &c. for which the same Tenth^s were behind, and retain the same till such time as his Predecessor pay if he be alive, and if he be dead, then till his Executors or Administrators, or those to whom his Goods and Chattels should belong do pay the same, and if the Money be not paid within twelve dayes after the distress taken, then the said distress to be apprized by two or three Indifferent Persons to be Sworn for the same, and then according to the said Appraisement so much of the distress to be sold as will pay the said Arrear and reasonable costs about the Distress, and if no Distress can be found on the said Dignity, &c. then the Predecessor if he be alive,

*What Remedy
for Arrear-
ages of Tenth^s*

alive, and if dead, his Executors, Administrators, and other, to whom his Goods and Chattels shall appertain or belong, shall be compelled to pay the same by Bill in Chancery, or Action of debt to be prosecuted by such successor, by Order of the Common Law, 27 H. 8. cap. 8. 1 Eliz. cap. 4.

*When the
Year for first
Fruits shall
begin.*

Note, that the Year for the first Fruits, is to begin from the time of the avoidance or vacation of the Benefice, &c. and the Tythes, Fruits, Oblations, Obventions, &c. during the time of such vacation, are to go to such Person as shall be next presented, &c. to the same Benefice or Dignity, and to his Executors, towards the payment of the first Fruits; And if any Archbishop, Bishop, Archdeacon, Ordinary, or any other Person or Persons, to their uses, and behoofs do receive and take the said Tythes, &c. and do not upon reasonable request, tender and pay the same to the next Incumbent, being lawfully Instituted, Inducted, or Admitted to such Benefice, &c. then they shall forfeit and lose the treble value of so much as they have received of the Fruits, &c. one Moiety to the King, and the other to the Incumbent, to be

recovered

recovered in any of the King's Courts, by Action, Bill, Plaint, Information, or otherwise, but every Archbishop, &c. may Retain so much of the Tythes, &c. in their hands, as shall pay for serving the cure, during such vacation, and the charges of gathering the said Tythes, &c. and where the Fruits of the vacation of such Spiritual Promotion be not sufficient to pay the Curate's stipend and wages for serving the cure, then the same is to be paid by the next Incumbent, within fourteen daies next after that he hath the Possession of the said Promotion Spiritual, 28 H. 8. cap.

11. 1 Eliz. cap. 4.

By the 37 H. 8. there was saved to the King, his Heirs and Successors, all the Tenth and first Fruits of all such Churches and Chapels as then were, or afterwards should be United and Consolidated in one, according to the same or such like rates and valuations, as the same Churches and Chapels were then rated and valued at to the King's Majesty, in his Court of first Fruits and Tenths, 37 H. 8. cap. 21.

*Churches
United to
pay first
Fruits and
Tenths.*

All Collectors of Tenths, under any Archbishop or Bishop, having Letters Patents, or other writings of their Office

*Collectors of
Tenths to be
bound for the
payment of
the same.*

face

fice of Collectorship, are to be bound by their sufficient writing, Obligatory or Recognizance, in the Court where the King's revenues of the Tenth's shall be answerable in such sum or sums of money, as shall be due within their Collection or Office, to save and keep the said Archbishop or Bishops, harmless, and without damage against the King for the same, and all such Grants, Patents or Writings to such Collectors, shall continue no longer in force then during such time as such Archbishop or Bishop who granted the same, shall remain Archbishop or Bishop of the same See or Bishoprick whereof he was possessed when he granted the same, 7 E. 6 cap. 4. and by the 14 Eliz. cap. 7. the Lands and Tenements, Goods and Chattels of such under Collectors of Tenth's, are made liable to answer the Queen, her Heirs and Successors for such sums as they shall gather yearly within their Collection, and every Archbishop, Bishop, and Dean, and Chapter, (*sede vacante*) to whom the Collection of such Tenth's shall appertain, shall be discharged of so much as shall be satisfied of or by the Lands, Tenements, Hereditaments, Goods or Chat-

Chattels of such under Collector, or his Heirs, without any other Warrant whatsoever in that behalf to be obtained, 14 *Eliz. cap. 7.* & 13 *Eliz. cap. 4.*

Vicarages not exceeding ten pounds, and Parsonages not exceeding ten marks in the King's Books, are not to pay any first Fruits as is shewed before; and every Incumbent liable to pay first Fruits, that lives one half Year after the last avoidance, so as he hath or might have received the Rents and Profits of that half Year, and before the end of the next half Year he happen to dye, or be Lawfully evicted, removed, or put from the same Promotion Spiritual by Judgment in an action at Common Law, without Fraud or Covin, then he is to pay but a fourth part of the first Fruits; and if he Live one Year, and dye or be evicted, &c. before the next half Year, then he is to pay one half of his first Fruits; and if he Live one Year and an half, and dye or be evicted, &c. before the end of six Months then next following, then he is to pay three parts of his first Fruits; and if he Live two Years, then he must pay his whole first Fruits, for such Promotion Spiritual, 1 *Eliz. cap. 4.*

*First Fruits
in what time
to be paid.*

M

By

*Colleges, &c.
discharged of
first Fruits,
&c.*

By the 1 Eliz. all Grants, Immunities and Liberties, given to either of the Universities of this Kingdom, or to any College or Hall in either of them, and to the Colleges of *Eaton* and *Winchester*, by any of the Kings of *England*, or by Act of Parliament, touching the release or discharge of first Fruits and Tenth, are to be and remain in full force and strength; and that all such conveyances and assurances in Law, as were then had or made to either of the Universities, or to any College or Hall, within either of them, or of any of the Parsonages or Benefices Improprate, or of any Patronage for the maintenance of students or learning, are good and effectual notwithstanding the same Act of Parliament; and all the Possessions of the free Chapel, Deanry and Canons of *Windsor*, are discharged of Tenth and first Fruits, but all the Rectories and Spiritual Promotions, belonging to the Archdeaconry of *Wells*, are made chargeable to the payment thereof, and all the Rectories, Parsonages, and Benefices Improprate, Glebe Lands, Tythe, Oblations, Obventions, Pensions, Portions, and other Profits and Emolluments, Ecclesiastical

cal and Spiritual, as were in the Survey Rule and Order of the Court of the Dutchy of *Lancaster*, were to continue so. And lastly by the same Act it is provided, that no Hospital founded and used, and the Possessions thereof imployed to and for the use and relief of Poor People, or any School or Schools, or the possessions or revenues of them, shall be charged with the payment of any Tenth or first Fruits, *1 Eliz. cap. 4.*

Note, that the demand of the Tenth ought to be exprefs, and not a summons to pay them at another place, as appears by the Case following; An Apparator came to the Church to the Parson, and said to him, that he must pay his Tenth to such an one, and at such a place, being four miles distant from the Church, and the Parson not paying, the Bishop certifies according to the Statute, that he refused to pay his Tenth, and whether this were a good demand or no was the Question; and all the Justices agreed that it was not, for they said a summons to pay was not sufficient, but it ought to be an exprefs demand, and by one who hath Authority to receive it, *M. 39, 40*

M 2

Eliz

*A demand
of Tenth,
how and
where to be
made.*

Eliz. C. B. Reyner and Parker's Case,
M. Rep. f. 541. pl. 714.

Bishop's
Certificate
of what force.

The Bishop of York, certified in the late Court of first Fruits and Tenths, Anno 5, & 6 E. 6. in these words, *adhibuimus omnimodam diligent. per Sub-collectores nostros per totam diocesim Eboracensem. Et comperimus, I. C. Vicarium de Gargrave Refusantem solvere subsidia Vicarie sue qui nullo modo metu penarum huiusmodi produci potuisset ad solutionem subsidii predicti sed perseverans in obstinatione sua malitia*, and this is left as a *quare* in Dyer, whether by this Certificate the Vicarage were void or no, Dyer, f. 116. a. pl. 69. but in Crook's reports it is said there, that the Justices held such a Certificate not to be Peremptory, but that it may be Traversed, for the Bishop doth it only as an Officer, and not as a Judge, as in Case of Bastardy, and here is to be a default in the Parson, *viz.* not payment, which is tryable *per pais*, for otherwise, all the Parsons in England may be put out of their Parsonages by such nude surmise, and bare Certificate without any answer, and the Law never intended to make the Certificate so Peremptory as the Book saith; and it is there said also, that

that the Officer of the Bishop, which is to demand the Tenths, ought also to be Authorized to receive them, for he cannot appoint them to be paid at another place, or to another Person, for the Parson is to pay them at his own House, and to the Person that demands them, in the Name of the Bishop, *M. 29, & 30 Eliz. in Scaccario, the Queen and Blanchet's Case, Cro. Elix. f. 80. pl. 44.*

Now we come to Dilapidations, which every Clergy Man ought to take care to prevent, for there can be nothing worse becoming the Dignity of a Clergy-man than Dilapidations, and non residence, and as the Canon Law made Provision against it, so also hath the Common Law of this Kingdom, as appears by the Books of *20 H. 6. 46. a. 7 H. 4. 3. b. 29 E. 3. 16. a.* for if Spiritual Persons waste the Lands, Woods, or Houses of their Churches, they may be deprived or deposed by their Superiours, who have the Visitation and Superiority over them, *Roll's Rep. 1 part, f. 167. & Godb. Rep. f. 259. pl. 337.*

Dilapidations cause of deprivation.

And by the *13 Eliz.* it is enacted, that if any Archbishop, Bishop, Dean, Archdeacon, Provost, Treasurer,

Grants to a void remedy for Dilapidations made void.

Chaunter, Chancellor, Prebendary, or any other, having any Dignity or Office in any Cathedral Church, within this Realm, or if any Parson, Vicar, or other Incumbent of any Ecclesiastical Living, whereunto do belong any House or Houses, or other buildings, which by Law or Custom he is bound to keep and maintain in reparation, do make any deed or deeds of gift or alienation, or other like conveyances of his moveable Goods or Chattels, to defeat or defraud his Successor of his just action and remedy; then in such Case the Successor may have the same remedy in the Spiritual Court, against the Grantee of the same Goods & Chattels for reparation of the Dilapidations, as he might or should have had against the Executors or Administrators of the Predecessor for the same, 13 *Eliz. cap. 10*. And such fraudulent deeds also to defraud Persons of their just Debts, Suits, Accompts, Damages, Penalties, Forfeitures, Herriots, Mortuaries and Reliefs, by another Act in the same Parliament, are made void to such Persons to whom any such thing is due, and to their Heirs, Successors, Administrators and Assigns, and those who shall

set such Covenous and Fraudulent deeds afoot, being privy to or knowing of the same, forfeit the value of all such Goods and Chattels, and all such money as shall be contained in such covenous and fained Bond, one Moiety to the King, and the other to the party grieved, to be recovered in any of the King's Courts of record, 13 Eliz. cap. 5.

By the 14 Eliz. it is enacted, that all sums of money, that shall be recovered, for or in the name of Dilapidations, by Sentence, Composition, or otherwise, shall within two Years after the receipt, be truly employed upon the Buildings and Reparations, in respect whereof such money for Dilapidations shall be paid, on pain that every Person so receiving and not employing as aforesaid, shall forfeit double as much as so by him shall be received and not employed, the which forfeiture shall be to the use of the Queens Majesty, her Heirs and Successors, 14 Eliz. cap. 11.

Moneys recovered for Dilapidations to be employed there.

If a Parson of a Church, and one A. are Tennants in Common of a Wood, and A. endeavours to make waste in the Trees, the Parson for preservation of the Timber Trees, may have a

A Prohibition lies against one that would waste the Woods of the Church.

Prohibition against him, that he shall doe no waste, and the reason thereof as the Chief Justice said, was, that if the Parson of a Church, would waste the Inheritance of his Church, to his private use, in cutting down the Trees, the Patron may have a Prohibition against him, for the Parson is seized in right of his Church, and his Glebe is the Dower of his Church, for he is Indowed thereof, and so say many ancient records, and so because a Prohibition lies against him, it is reason that he shall have the same remedy against him who holds in Common with him, F. N. B. 49 & Co. Rep. 1 r Lib. f. 49. v.

A Prohibition granted against the Bishop of Durham, 35 E. 1.

The Lord Cook saith, there was a notable Resolution in Parliament, held at Carlisle, 35 E. 1. against Clergy-men, making waste of their Spiritual Promotions, I shall set it down *verbatim*, as he inserts it viz. *Voile Nostre Seignior Le Roy entendre, que Sir Anthony Evesque de durelme waste & destruit tout le Bois apperteinant à Son Esglise in Lenesquerie de durelme, per donc & vende & manait gard & per rearer des forge de Ferre & Plombs, & ardre Carbons, &c. ddt si Nostre Seignior Le Roy que est Avowee del Esglise, ny ymit remedie, Les-*
glise

*glise, auant la forme dispoite & impou-
ria, in prejudice de nostre Seigneur Le Roy
in sa Couronne, & de Chaper de duchie.*
To which the answer was *Inhibetor
per Breve de Cancellaria, Episcopo & Mi-
nistris suis ne faciat vassum de contentis in
Petitione*, by which it appears, that the
Parliament refers him to the ordinary
remedy of the Common Law, by Writ
of Prohibition in such Case, 35 E. 2.
Co. Rep. 11 Lib. f. 49. a. & vide Roll's
Rep. 1 part, f. 86. 176. & 335.

And the Lord Cook saith further, *A Prohibiti-
on granted
against the
Bishop of
Dublin, &c.*
that M. 23 E. 1. amongst the Judge-
ments before the King, *Hunt. f. 83.* in
the Treasury of the Exchequer it is
thus adjudged, *quod Ecclesia est infra
etatem, et in custodia domini regis, qui
tenetur jura et hereditates ejusdem ma-
nutenere et defendere, et Rot. patent.*
*Anno 14 H. 3 M. 8. Archiepiscopus Du-
blin fecit finem de 300 marcis de of-
forestatione foreste Archiepiscopatus sui,*
and see 2 H. 4. f. 3. b. If a Bishop or
Archdeacon pull down and cut all the
Woods which he hath, he shall be de-
posed as a Dilapidator of his House,
29 E. 3. 16 Ac. and see 27 Aff. pl. 10.
10 H. 6. 46 Co. Inst. 3 part, f. 304.
And the Treatise Intituled, *Ne Rectoris
proferant*

prosteruant arbores in cimiterio, &c. is no more but a Declaration of the Common Law, and it is regularly true, *melio- rem conditionem Ecclesie facere potest Prælatum, deterio- rem nequaquam*, Co. Rep. 11 Lib. f. 49. b.

Where suits
for Dilapi-
dations are
to be.

Although suits for Dilapidations are most properly to be sued in the Spiritual Court, and if any Prohibition be granted, the same ought to be superseded by a Consultation, as F. N. B. saith, f. 50. F. yet this is intended where the suit is grounded upon the Canon Law, for by the Custom of England, the Successor may have a special Action upon the Case, against the Dilapidator, his Executors or Administrators, and in the King's Bench it was agreed by all the Justices, that a Prohibition is grantable against one who waists the Houses of a Parson Incumbent, or cuts the Trees, or makes waste and sells them, and does not employ them for repairs, *vide* 2 H. 4, 3. M. 12. Jac. B. R. Bishop of Salisbury's Case, Godb. Rep. f. 259. pl. 357. H. 13. Jac. B. R. Saccar's Case, M. Rep. f. 916. pl. 1303. and so it was also agreed, M. 12 Jac. B. R. Stockman's and Wither's Case, Roll's Rep. 1 part, f. 86. pl. 34. & *vide* f. 335 & Boult. Rep. 3 part. f. 91, 92. The

The Vicar of the Parish of *Alisbury* For what use
Clergy-men
may fell
down Wood. in *Devon-shire* had cut divers great Trees of Timber, and did not Repair the Church with them, and upon Suggestion thereof to the King's Bench, and that he would cut more Trees in like manner, a Prohibition was thereupon granted by the Court, *H. 13. Jac. B. R. Knowl's and Hargrave's Case, Roll's Rep. 1. part f. 335. pl. 44.* and *Cook* Lord Chief Justice, *M. 12. Jac.* said that a Bishop is only to fell Timber for Building, for Fewel and for his other necessary occasions; and there is no Bishoprick but the same is of the Foundation of the King, and the Woods of the Bishoprick are called the Dower of the Church, and these are alwayes carefully to be preserved, and if he fell and destroy them, upon motion to the Court a Prohibition will be Granted, and so it shall be also in the Case of a Dean and Chapter, *Boul. Rep. 2. part f. 279.*

As to Mortuaries observe that by *Mortuaries
where and
how to be
paid.* the 21 *H. 8.* it is Enacted that no Mortuary or Corse present, shall be given or demanded of any Person, but only in such place where heretofore Mortuaries have been used to be paid and given

given; nor shall any Person pay Mortuaries in more places than one, that is to say, in the place of his most habitation or dwelling, and there but one Mortuary; and no Mortuary shall be taken or demanded of any Person whatsoever he be, which at the time of his death hath in moveable Goods under the value of Ten Marks: Neither shall any Parson, Vicar, Curate, &c. nor any of their Farmers, Bayliffs or Lessees take for any Person dying or dead, and at the time of his death being in moveable Goods to the value of Ten Marks or more, his Debts being paid and under Thirty pounds, above the sum of Three shillings and four pence for his Mortuary in the whole; nor where the Goods amount to Thirty pounds or more above his Debts paid and under Forty pounds, above the value of Six shillings and Eight pence for his Mortuary in the whole; nor where the Goods amount to Forty pounds or above, to any sum whatsoever above his Debts paid, more than the sum of Ten shillings for his Mortuary in the whole, 21 H. 8. cap. 6. Swin. Test. part, 6. §. 16. Godol. Or. Legacy f. 148.

Nor

Nor shall any Parson, Vicar, Curate, &c. or other, take, demand or ask any Mortuary, or any other thing by way of Mortuary of any Woman, being Covert Baron, nor for any Child, nor any Person not keeping House, nor for a Wayfaring Man, or other that maketh no Residence in the place where they shall happen to dye; but the Mortuary of such Wayfaring Man shall be answerable (in places where Mortuaries are accustomed to be paid, in Manner, Form and Rate before mentioned and not otherwise) in the places where such Wayfaring Persons at the time of their death had their most Habitation, House and dwelling places and no where else, 21 H. 8. cap. 6. Swin, part 6. §. 16. & Godol. f. 148.

Who are to pay no Mortuaries.

No Mortuaries nor Corse present, for any Sum of Money or other thing for them, shall be demanded or had in the Parts of *Wales*, nor in the Marches of the same, nor in the Town of *Barwick* nor Marches of the same, but only in such places where Mortuaries have been accustomed to be paid, neither shall any Mortuaries or Corse present, nor any thing for the same

Where Mortuaries are not to be paid.

same be demanded or had in those places, but only after the order and manner above specified and none otherwise, nor of any other Person than is above Limited; But it is made Lawful for the Bishops of *Bangor, Landaffe, St. Davids* and *St. Asaph*, and likewise to the Arch-deacon of *Chester* to take such Mortuaries of the Priests within their Diocesses and Jurisdictions as heretofore have been accustomed, 21 H. 8. Cap. 6. *Swin. part 6. §. 16. Godol. f. 148.*

*Mortuaries
to be paid ac-
cording to
Custom, &c.*

And in such places (where Mortuaries have been accustomed to be taken of less value) than is aforesaid, there they shall not be compelled to pay any other Mortuaries, or more for any Mortuary than hath been accustomed, nor shall any Mortuary be demanded, taken or had in such place of any Person or Persons exempted by the Act, nor contrary to the said Act: And if any Parson, Vicar, Curate, &c. or their Farmers, Bayliffs, &c. do take, receive or demand of any Person within this Realm, for any Person dying within the same a Mortuary, &c. more than is before mentioned, or do Convent or call any Person or Persons before any Judge

Judge Spiritual for the Recovery of any such Mortuary, &c. more than is before mentioned, he shall forfeit for every time so demanding, conventioning, &c. so much in value as he shall take above the Sum Limited, and also Forty shillings to the Party grieved contrary to the Act, to be Recovered In any of the King's Courts, &c. but it is Lawful for any Spiritual Person to take any Sum of Money or other thing which by any Person dying shall be given or bequeathed unto him, or to the High Altar of the Church, 21 H. 8. cap. 6. and all fraudulent Deeds made to deceive any of their Mortuaries are made void by the 13 Eliz. cap. 5.

The King's Prohibition doth not lye, when any Oblations, Obventions or Mortuaries (where Mortuaries have been used to be paid) be by those Names demanded, in any Ecclesiastical Court, although for the long with-holding of the same they be esteemed at a certain Sum of Money : *Articl. Cleri, 9 E. 2. cap. 1. & vide Co. Inst. 2. part f. 491. 619. but Doctor and Student, Lib. 2. cap. 55. saith a Prohibition doth lye,*
Quere.

*Prohibition
 lyes not,
 when.*

And

How Mortu-
aries are pay-
able.

And where Mortuaries are due they ought to be paid out of the Death's part only, and not out of the whole before division (where by the custom of the Country the Widow and Children are to have their Reasonable parts) by the opinion of Dr. Swinburne, and his Reason is, because a Mortuary is of the Nature of a Legacy, and Termed in Law the Principal Legacy; And being that Legacies are to be paid out of the Death's part, therefore the Mortuary is to be paid out of the same part, but before any other Legacy, and without any defalcation, as well for that it is a Principal Legacy, as by force of the Statute aforesaid, *Swin. Test. part 6. §. 16. in fine.*

Six things
due to the
King upon
the death of
every Bishop.

After the Death of every Bishop there is a Duty due to the King, which some have called a Mortuary, but the Lord Cook saith it is not any Mortuary, but he saith, true it is that the King after their Deceases hath Six things, viz. *Optimum Equum sive Palefridum ipsius Episcopi cum Cella & Freno. 2. Unam Chlamydem sive Glocam cum Capella. 3. Unum Cipham cum cooperitorio. 4. Unum Pelvem cum Lavatorio sive Aquar. 5. Unum Annulum Aureum.*

Aureum. 6. *Necnon Mutum Canum*
que ad Dominum Regem ratione Prero-
gative sue spectant & pertinent; inter
Communia, H. 2. E. 2. in *Seaccar.*
 post mortem *Episc. Bath & Well.* Tr. 36.
 E. 3. *Ibidem* post mortem *Episc. Ci-*
rences. H. 5. E. 4. *Ibidem* Rot. 47.
 post mortem *Archiep. Ebor. Co. Inst.* 2.
 part f. 491.

For this duty there is a special Writ
 that issueth out of the Exchequer af-
 ter the Decease of the Bishop for an-
 swering of the same, and in the Re-
 cords this is called *Multa Episcopi* or
Multura Episcopi, derived à *Multa*, for
 that it was a Fine or Final satisfacti-
 on given to the King that they might
 have power to make their Last Wills
 and Testaments, and to have the pro-
 bate of other Mens Testaments and
 granting Administrations, for it is true
 where it is said, *Nullam habebant Epis-*
copi Authoritatem præter eam à Rege ac-
ceptam referebant, Jus Testamenta pro-
bandi non habebant, Administrationis
potestatem cuiquam delegare non pote-
rant, nec ipsi quidem Testamenta facere
de Jure Communi, dum id illis reg-
nante Henrico Tertio Concessum erat,
& Confirmatum vivente Edw. 1. Rot.
 Claus.

A Writ lyes
for these
things after
every Bishops
death; see the
form thereof
Co. Inst. 4.
part f. 338.

Claus. 7 H. 3. M. 16. Rot. Parl. 36. H. 3. M. 1. And *Linwood* saith, *Beneficiarius non potest testari de communi Jure, sed de Consuetudine Anglia*; And he saith also that Probate of Testaments *de Consuetudine Anglia, & non de Jure Communi* belong to Court Christian; *Lin. cap. de Foro compet. f. 7. Lib. 7. f. 44. & vide Britton. f. 11. b. Brañ. Lib. 5. f. 403. &c. Fleta, Lib. 2. cap. 53. & Lib. 6. cap. 36. & Co. Inst. 2. part f. 488. & 491.* but this seems to be a Digression from our intended purpose, but I hope the Reverend Clergy-man will Pardon it, *vide Co. Inst. 4. part. f. 338.*

*Prohibition
where a Mortu-
ary is de-
manded,
when granted
by.*

The Bishop of *Chester* in the Consistory Court of *Chester*, before the Commissary there, Sued for a Mortuary after the Death of *William Hinde* a Priest of the said Diocess, Surmising that by Custom there, he ought to have for a Mortuary after the Death of every Priest dying within the said Arch-deaconry of *Chester*, the best Horse or Mare, his Saddle, Bridle and Spurs, his best Gown or Cloak, his best Hat, his best upper Garment under his Gown, his Tippet, his best Signet or Ring; as to the Bishop *de*
debit

debit' consuetud' fore supponitur, &c.
 upon this the Defendant obtained a Prohibition, averring that there is no such Custom, and that she had paid a Mortuary to the Parson of *Bumberry*, and in this Case it was moved for a Consultation, and the Suit being for a Mortuary, the Court was divided in opinion; but it appearing that the Bishop had Sued after the Prohibition, which was a Contempt and ought to be answered, it was thereupon appointed that he should Plead or Demur; And then the Court would give Judgment upon the Record before them, *M. 7. Car. 1. B. R. Margaret Hinds Case, and the Bishop of Chester, Cro. Car. f. 237.*

CHAP.

C H A P. I X.

*What Qualifications are required in
Leases made by Ecclesiastical Persons.*

*What Estates
Bishops, &c.
might have
made by the
Common Law.*

Formerly by the Common Law Bishops with the Confirmation of the Dean and Chapter, Master and Fellows of any Colleges, Deans and Chapters, Masters or Guardians of Hospitals, and their Brethren, Parsons and Vicars with Consent of the Patron and Ordinary, Arch-deacon; Prebend or any other Body Politick, Spiritual and Ecclesiastical (*Concurrentibus his qui in Jure requiruntur*) might have made Leases for Lives or Years without Limitation or Stint; And so might they have made Gifts in Tail, or Estates in Fee, at their own Will and Pleasure, whereupon not only great decay of Divine Service, but Dilapidations and other Inconveniences ensued; but now the Law is altered in these Cases by the Statutes of the 32 H. 8. 1 Eliz. 18. Eliz. 13. Eliz. 6. 1. Jac. of which Statutes one is enabling, and the rest disabling, Co. Lit. f. 44. a.

I shall first begin with a Recital of *Leases in Writing by certain Persons of what force, &c.*
the Statutes, then give you the Book
Cases thereupon: By the Stat. 32. H. 8.
All Leases to be made of any Mannors,
Lands, Tenements or Hereditaments,
by Writing indented under Hand and
Seal for Term of years or for Term of
Life, by any Person or Persons being
of full Age of One and twenty years,
having any Estate of Inheritance ei-
ther in Fee-Simple, or in Fee-Tail, in
their own Right or in the Right of their
Churches or Wives, &c. shall be good
and effectual in the Law, against the
Lessors their Wives, Heirs and Suc-
cessors and every of them, according to
such Estate as is Comprised and Speci-
fied in every such Indenture of Lease,
in like manner and form as the same
should have been, if the Lessors there-
of and every of them at the time of
making such Leases, had been Law-
fully seized of the same Lands, Tene-
ments and Hereditaments comprised
in such Indenture of a good, perfect
and pure Estate in Fee-Simple there-
of to their own only uses, 32 H. 8.
H. 8. p. 28.

*Old Leases
to be Surren-
dered, &c.*

Provided that this Act shall not extend to any Leases to be made of any Mannors, Lands, &c. being in the hands of any Farmer or Farmers by virtue of an Old Lease, unless the same Old Lease be expired, surrendered or ended within one year, next after the making of the said new Lease, nor shall extend to any Grant to be made of any Reversion of any Man- nor, Lands, &c. nor to any Lease of any Mannors, Lands, &c. which have not most commonly been letten to Farme, or occupied by the Farmers thereof by the space of Twenty years next before such Leases thereof made, nor to any Lease to be made without Impeachment of Wast, nor to any Lease to be made above the number of One and twenty years, or Three Lives at the most from the day of the making thereof; And that upon every such Lease there be reserved yearly during the same Lease, due and payable to the Lessors, their Heirs and Successors to whom the same Lands should have come after the death of the Lessors, if no such Lease had been there made, and to whom the Reversion thereof shall appertain according

their Estates and Interests; so much yearly Farm or Rent or more, as hath been most accustomably yielded and paid for the same within Twenty years next before such Lease thereof made; And that every such Person and Persons to whom the Reversion of such Mannors, Lands, &c. so to be letten, shall appertain as aforesaid after the deaths of such Lessors or their Heirs, shall and may have such like Remedy and Advantage to all Intents and Purposes against the Lessees thereof, their Executors and Assigns, as the same Lessors should or might have had against the same Lessees, &c. 32 H. 8. cap. 28.

And it is also further provided that this Act shall not extend to give any Liberty or Power to any Parson or Vicar of any Church or Vicarage, for to make any Lease or Grant of any of their Messuages, Lands, Tenements, Tithes, Profits or Hereditaments belonging to their Churches or Vicarages, otherwise or in any manner, than they should or might have done before the making of the same Act, any thing therein contained to the contrary thereof Notwithstanding, 32 H. 8. cap. 28.

*Parsons and
Vicars ex-
cepted out of
the Act.*

By

*Leases by
Bishops, &c.
to be made
for 21 years
or 3 Lives.*

By the 1 Eliz. All Gifts, Grants, Feoffments, Fines and other Conveyances or Estates, from the first day of the said Parliament to be made, done or suffered by any Arch-bishop or Bishop, of any Honors, Castles, Mannors, Lands, Tenements or other Hereditaments, being parcel of the Possessions of his Arch-bishoprick or Bishoprick, or united, appertaining or belonging to any of the same, to any Person (other than to the Queen, Her Heirs or Successors) whereby any Estate should or might pass from the Arch-bishop or Bishop, other than for the Term of One and twenty years or Three Lives, from such time as any Lease, Grant or Assurance shall begin or whereupon the old accustomed Rent or more shall be reserved, payable yearly during the said Term of One and twenty years or Three Lives shall be utterly void, 1 Eliz. cap. 19. By the 1 Jac. All Arch-bishops and Bishops are disabled in Law to make, doe, levy or suffer any Act or Acts, thing or things, whereby or by means whereof any of the said Honors, Castles, Mannors, Lands, &c. shall or may be Aliened, Granted, &c. to the King.

His Heirs or Successors, but that all such Grants shall be void, 1 Jac. esp. 3. Co. Rep. 10. Lib. f. 62; o. & 11. Lib. f. 71. b. 72. a.

And by the 13 Eliz. it is enacted, ^{Leases made by Spiritual Persons, &c. for what Term so continue.} that all Leases, Gifts, Grants, &c. to be made, had, done or suffered, by any Master and Fellows of any College, Dean and Chapter of any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, or Vicar, or any other, having any Spiritual or Ecclesiastical Living, or any Houses, Land, Tythes, Tenements or other Hereditaments, being any parcel of the possessions of any such College, Cathedral Church, Chapel, Hospital, Parsonage, Vicarage or other Spiritual Promotion, or any waies appertaining or belonging to the same, or any of them, to any Person or Persons, Bodies Politick or Corporate, (other then for the Term of 21 Years, or three Lives, from the time as any such Lease or Grant shall be made or granted, whereupon the accustomed yearly Rent or more, shall be reserved and payable yearly, during the said Term) shall be utterly void and of none effect, to all intents, constructions and purposes; but it is provided,

N

provided, that nothing in this Act shall be taken or construed, to make good any Lease or other Grant, to be made by such College or Collegiate Church, within either of both the Universities of *Oxford* and *Cambridge*, or else where, within the Realm of *England*, for more Years then are limited by their private Statutes, 13 *Eliz. cap. 10.* & vide 14 *Eliz. cap. 11.*

*Leases by
Parsons, &c.
to be void
upon non re-
sidence.*

And further it is enacted, that no Lease to be made of any Benefice, or Ecclesiastical Promotion with cure, or any part thereof, and not being impropriated, shall endure any longer then while the Lessor shall be Ordinarily Resident, and serving the cure of such Benefice, without absence of fourscore daies in any one Year, but that every such Lease, immediately upon such absence, shall cease and be void; and the Incumbent so offending, shall for the same loose one Years profit of his said Benefice, to be distributed by the Ordinary among the poor of the Parish; And that all chargings of such Benefices with cure, other then Rents to be reserved upon Leases shall be utterly void; provided that every Person allowed to have two Benefices, may demise

mise the one of them, upon which he shall not be most Ordinarily Resident to his Curate, only that shall there serve the cure for him; but such Lease shall endure no longer then during such Curate's Residence, without absence above forty daies in any one Year, 13 Eliz. cap. 20. 14 Eliz. cap. 11.

Likewise all Bonds, Contracts, Covenants and Promises, made for suffering or permitting any Person to enjoy any Benefice or Ecclesiastical Promotion with cure, or to take the profits thereof, shall be to all intents and purposes, adjudged of such force and validity and not otherwise, as Leases by the same Persons made of such Benefices, &c. with cure; and that all such Leases, Bonds, &c. concerning such Benefices and Ecclesiastical Promotions with cure, made by any Curate, shall be of no other nor better force, validity or continuance, then if the same had been made by the Beneficed Person himself, that demiseth the same to any such Curate; But Masters and Fellows of Colleges, Deans and Chapters of Cathedral or Collegiate Churches, Masters or Guardians of any Hospital, or any Parson or Vicar, or any other,

Bonds, &c. for enjoying &c. void.

N 2

having

having any Spiritual or Ecclesiastical Living, may make a Grant, Assurance or Lease of their Houses and Grounds appertaining to the same, being situate in any City, Borough, Town Corporate, or Market Town, or the Suburbs of any of them, after such manner as their several Statutes do permit; so that such House be not the Capital or dwelling House, used for the habitation of the Persons above-said, nor have Ground to the same belonging above the quantity of ten Acres, 14 *Eliz. cap. 11.* & vide *Tr. 14 Jac. C. B. Crane and Taylor's Case, Hob. Rep. f. 269.*

*Leases of
Houses in
Cities, &c.
how long to
continue.*

But it is provided by the same Statute, that no Lease be made in Reversion, nor without reserving the accustomed yearly Rent, nor without charging the Lessee with reparations, nor for longer Term then forty Years at the most, nor are any Houses to be aliened, unless that in Recompence thereof, there shall afore, with, or presently after such alienation, be good, lawfull, and sufficient assurance made in Fee simple, absolutely to such Colleges, Houses, Bodies Politick or Corporate, and

and their Successors of Lands of as good value, and of as great yearly value at the least, as so shall be aliened; any Statute to the contrary notwithstanding. 14 Eliz. cap. 11.

And by the 18 Eliz. all Leases to be made by any Ecclesiastical, Spiritual or Collegiate Persons, above mentioned, of any of their said Ecclesiastical, Spiritual or Collegiate Lands, Tenements, or Hereditaments, whereof any former Lease for Years is in being, not to be expired, surrendered or ended within three Years next after the making of any such new Lease, shall be void, frustrate, and of none effect. And all and every Bond and Covenant whatsoever, to be made for renewing or making of any Lease or Leases, contrary to the true meaning of this Act, or of the Act made, 13 Eliz. cap. 10. shall be utterly void, any Law, Statute, Ordinance, or other thing whatsoever, to the contrary in any wise notwithstanding. 18 Eliz. cap. 11.

Old Leases to be ended within three Years, when a new Lease is made.

And where an Incumbent offends against, 13 Eliz. 20. in letting his Benefice, &c. after complaint made to the Ordinary, and Sentence given of any Offence, whereby he shall or ought to

Sequestration when to be granted.

lose one Years profit of his Benefice, the Ordinary within two Months after such Sentence given, and Request to him made by the Church-Wardens of the said Parish or one of them, shall grant the Sequestration of such profits, to such Inhabitant or Inhabitants within the Parish, where such Benefice shall be, as to him shall seem meet and convenient; and upon default therein by the Ordinary, that it may and shall be Lawfull to every Parishioner where the Benefice is, to retain and keep his or their Tythes; and likewise for the Church-Wardens of the said Parish to enter and take the profits of the Glebe Land, and other Rents and Duties of every such Benefice, to be employed to the use of the Poor as aforesaid; until such time as Sequestration shall be committed by the Ordinary, and then as well the Church-Wardens as Parishioners to yield Account of, and make payment to him or them, to whom such Sequestration shall be committed; and that he or they to whom it shall be committed, shall justly and truly employ and bestow the said profits, or the true and just value thereof, without Fraud or Guile to such uses as by the said

said Statute is limited and appointed, upon pain of forfeiture of double the value of such with-holden profits, to be recovered in the Ecclesiastical Court by the Poor of the Parish, 18 *Eliz. cap. 11.* & *vide H. 43 Eliz. C. B. Jackson's Case, Goldess. Rep. pa. 154. pl. 82.*

And note that it hath been Resolved, that the *stat. 13 Eliz. cap. 20. & 18 Eliz. cap. 11*, concerning Leases made by Deans and Chapters, Colleges, &c. are general Laws, of which the Court is to take notice, although they be not found by the Jurors, and so it was Resolved between *Claypool* and *Carter*, in a Writ of Error in the King's Bench, as my Lord *Cook* cites it in his *Rep. 4 Lib. f. 120. b.*

Judges to take notice of general Laws.

Having taken the Heads of the Statutes which have been made, concerning Ecclesiastical Persons Leases, let us now see what our Law Books say concerning the same, and first observe, that whereas before the making of the Statute of the 32 *H. 8. cap. 18.* no Archbishop, Bishop, Archdeacon, Dean or Prebend, could have made any Lease, to have bound his Successors, without the Confirmation and Consent of their Chapters, &c. now

Nine Rules to be observed in Ecclesiastical Persons Leases, &c.

by this Act they are enabled to make Leases for three Lives, or 21 Years, to bind their Successors without any Confirmation at all, observing these Nine Rules following in their said Leases.

1. Rule.

First, The Lease must be made by Deed Indented, and not by Deed Poll, or by *Paroll. Co. Lit. f. 44. a.*

2. Rule.

Secondly, It must be made to begin from the day of the making thereof, or from the making thereof, *Co. Lit. f. 44. a. Co. Rep. 5 Lib. f. 6. a.*

3. Rule.

Thirdly, If there be an Old Lease in being it must be surrendered, expired, or ended within a Year of the making of the New Lease, and the surrender must be absolute and not conditional, *Co. Lit. f. 44.*

4. Rule.

Fourthly, There must not be a double Lease in being at one time, as if a Lease for Years be made according to the Statute, he in the Reversion, cannot expulse the Lessee, and make a Lease for Live or Lives according to the Statute, nor *converso*, for the words of the Statute be to make a Lease for three Lives, or 21 Years, so as one of the other may be made but not both, *Co. Lit. f. 44. b. Tr. 30. Eliz. B. R. 11mer*
and

and *Gale's Case*, *M. Rep. f. 153 pl. 400.*
& Co. Rep. 5. Lib. f. 1. d.

Fifthly, it must not exceed Three ^{5 Rule.}
 Lives or one and twenty years from
 the making of it, but it may be for a
 less Term or fewer years, *Co. Lib. f. 44. b.*
& Co. Rep. 5. Lib. f. 2. b.

Sixthly, It must be of Lands, Te- ^{6 Rule.}
 nements or Hereditaments, Manur-
 able or Corporal, which are necessary
 to be Letten, and whereof a Rent by
 Law may be reserved, and not of
 things that lye in Grant, as Advow-
 sons, Faires, Markets, Franchises and
 the like, whereof a Rent cannot be
 reserved, *Co. Lib. f. 44. b. & 144. a.*
Vaugh. Rep. f. 203, 204. Tr. 30. Eliz.
B. R. Jewell's Case, Co. Rep. 3. Lib.
f. 3. a. & vide ro H. 6. 2.

Seventhly, It must be of Lands ^{7 Rule.}
 and Tenements most commonly Let-
 ten to Farm, or occupied by the Far-
 mers thereof by the space of Twenty
 years next before the Lease made, but
 so as it be but Letten for Eleven years
 at one or several times within those
 Twenty years it is sufficient; A Grant
 by Copy of Court Roll in Fee, for
 Life or years, is a sufficient Letting
 to Farm within this Statute, for he is

but a Tenant at Will according to that Custom, and so it is of a Lease at Will by the Common Law, but these Lettings to Farm must be made by some Seized of an Estate of Inheritance, *Co. Lit. f. 44. b. Tr. 3. Jac. B. R. Dean and Chapter of Worcester's Case, Co. Rep. 6. Lib. f. 37. a.*

8 Rule.

Eighthly, Upon every such Lease there must be reserved yearly during the same Lease, due and payable to the Lessors their Heirs and Successors, &c. so much yearly Rent, or more as hath been most accustomably yielded or paid for the Lands, &c. within Twenty years next before such Lease made; hereby first it appears that nothing can be demised (as hath been said before) by Authority of this Act, but that whereout a Rent may be lawfully reserved. Secondly, that where not only a yearly Rent was reserved formerly, but things not Annual as Herriots or any Fine, or other Profit at or upon the death of the Farmer, yet if the Yearly Rent be reserved upon a Lease made by force of this Statute, it is sufficient by the express words of the Act. Thirdly, if he reserve more than the accustomable Rent, it is good also

also by the expresse Letter of the Act, but if Twenty Acres of Land have been accustomably Letten, and a Lease is made of those Twenty, and of one Acre which was not accustomably Letten, reserving the accustomable Yearly Rent, and so much more as exceeds the value of the other Acre, this Lease is not warranted by the Act, for that the accustomable Rent is not reserved, seeing part was not accustomably Letten, and the Rent Issueth out of the whole. Fourthly, if the accustomable Rent had been payable at Four days or Feasts of the Year, yet if it be reserved yearly payable at one Feast it is sufficient, for the words of the Statute be, reserved Yearly, *Co. Lit. f. 44. b. & vide M. Rep. f. 199. & Co. Rep. 6. Lib. f. 37 & 38.*

Ninthly, The Lease must not be to ^{9 Rule,} hold without Impeachment of Wast, therefore if a Lease be made for Life, the remainder for Life, &c. this is not warranted by the Statute, because it is punishable of Wast; but if a Lease be made to one during Three Lives this is good, for the Occupant if any happen shall be punished for Wast; the words

words of the Statute be (seized in the Right of his Church) yet a Bishop that is seized in *Jure Episcopatus*, a Dean of his sole possessions in *Jure Decanatus*, an Arch-deacon in *Jure Archidiaconatus*, a Prebend and the like are within the Statute, for every of them generally is seized in *Jure Ecclesie*, Co. Lit. f. 44. o. b.

Leases made
by Parsons
and Vicars,
to be Con-
firmed by Pa-
tron and Or-
dinary.

Note, that Parsons and Vicars are excepted out of the Statute of the 32 H. 8. and therefore if they make a Lease for Three Lives or one and twenty years of Lands accustomably. Letten, reserving the accustomable Rent, such Lease must be Confirmed by the Patron and Ordinary, because it is excepted out of the Statute aforesaid, and not restrained by the Statutes of the 1 or 13 of Eliz. Co. Lit. f. 44. b. 3 E. 6. 1. Mar. Bro. 62. Tit. Leases.

Prebends
may make
Leases as Bi-
shops may do.

But a Prebend is not excepted, therefore he may make Leases as Bishops may do, by the said Statute, vide M. 36 & 37 Eliz. B. R. *Watkinson* and *Man's Case*, Cro. Eliz. f. 350. pl. 27. & Tr. 31 Eliz. C. B. *Adon* and *Pitcher's Case*, Leon. Rep. 4. part f. 51. pl. 132.

And

And whereas in the 1 Eliz. being
one of the disabling Statutes, the words
of the Restraint are, other than for
the Term of one and twenty years or
Three Lives, from such time as any
such Grant or Assurance shall be given,
whereupon the Old and accustomed
Yearly Rent or more, shall be reserved;
and to that effect is the Exception in
the 13 of Eliz. yet it is to be understood
that neither of these disabling Statutes
nor any other do in any sort, alter or
change the enabling Statute of the
32 H. 8. but leaveth it for a Pattern
in many things for Leases to be made
by others, and no Lease made according
to the Exception of the 1 and 13 Eliz.
and not warranted by the 32 H. 8. if
it be made by a Bishop or any Sole
Corporation, but it must be Confirm-
ed by the Dean and Chapters or others
that have Interest; and such Leases for
years to be made according to the Ex-
ceptions of the 1 or 13 Eliz. must have
also the Nine qualities required by the
32 H. 8. before mentioned (Concur-
rent Leases only excepted) although
the Statutes of the 1 and 13 Eliz. do
not direct them to be so; only the
Leases made by force of the 32 H. 8.

must

Leases to be
all made ac-
cording to the
Pattern in
32 H. 8.

must begin from the day of the making, and the Leases made within the Exception of the other Statutes from the making, so note the difference of the Penning of the said Statutes, *Co. Lit. 44. b. 45. a. Bridg. Rep. f. 30. & Co. Rep. 10. Lib. f. 60. b.*

Bishops may
make Con-
current Leases.

If a Bishop make a Lease for one and twenty years, and all these years are run out save Three or more, yet may the Bishop make a new Lease to another for one and twenty years to begin from the making according to the Exception of the Statute, and this Concurrent Lease being Confirmed by the Dean and Chapter, shall be good to bind his Successors, within the Exception of the 1 Eliz. in the Case of Bishops, as also upon the 13 Eliz. which extends to Spiritual and Ecclesiastical Corporations aggregate of many, as Deans and Chapters, &c. vide *Tr. 21 Eliz. Fox and Collyer's Case, M. Rep. f. 197. pl. 251. Ander. Rep. 1. part f. 65. pl. 140. & M. 22 & 23. Eliz. Scot and Nicholas against Brewster and Stubbing Cited in Moor, and see Leon. Rep. 1. part f. 148.*

Not,

Note, that Bishops are not conceived to be comprehended within the Proviso of the Restraining Act of the 18 Eliz. 1. for though the words are general enough, yet the particulars mentioned before the general words, being of an inferior Rank, the general words cannot draw in the more worthy; *Godb. Rep. f. 395. and Goddes. Rep. p. 171. pl. 102.* And although Deans, Prebendaries, Heads of Colleges, Masters of Hospitals, and other Ecclesiastical Persons, &c. may also make Concurrent Leases as Bishops may with Confirmation, yet they must observe it must be within Three years of the determination of the former Term, by Expiration, Surrender or otherwise; so that in this Case the Bishops have the Advantage; but note that a Bishop cannot make a Concurrent Lease for Lives, if there be a Lease for years *in Esse* to bind his Successors, though the Tenant do Attorne, and such Lease is also Confirmed by the Dean and Chapter; nor can he make a Concurrent Lease for years, if a Lease for Lives be *in Esse*, *Co. Lit. f. 45. a. Tr. 30. Eliz. C. B. Rot. 803.* *Marler and Wright and Green's Case, Cro.*

*Bishops not
comprehend
ed within the
18 Eliz.*

Err. Bina for 1. pt. 9 Tr. 29 Eliz. Rot. 903. B. R. Blower and Gale's Case, Co. Rep. 15 Lib. f. 2. a. & M. Rep. f. 233. pl. 400. and see Brew. Rep. 2 part, f. 134. & P. 29 Eliz. B. R. Bunny and Wright and Stafford's Case, Leon. Rep. 1 part, f. 39. pl. 77. & f. 148.

*Several con-
current Lea-
ses, that
which is fir-
med to be
preferred.*

And where a Bishop makes several Concurrent Leases, and the last is first confirmed, and then the first is confirmed, in this Case the first Lease shall be preferred, because nothing passeth by the Confirmation in point of Interest, but a meer consent to make it perdurable and effectual, and of this Opinion was *Dyer, Weston and Caru*, Justices, being asked their Opinions by *Bendish*, *Tr. 6 Eliz. M. Rep. f. 66. pl. 180.*

*Where a Bi-
shop hath
two Chapters
both must
confirm.*

If a Bishop hath two Chapters, they ought both to confirm, or else it is not good to bind the Successor, but if a Bishop had two Chapters, and one of them surrender without the Bishop's Licence, is suspended or dissolved, then the confirmation of the other is sufficient, and this question coming in debate amongst the Justices in Ireland, in a Case concerning a Lease made by the Bishop of *Dublin*, and the Justices there being divided in Opinion, *Dyer*,
and

and the rest of the Justices of the Common Pleas here in England, were all of Opinion, that after Surrender, &c. such a Confirmation by one Chapter was good, though formerly it used to be by both, and a Certificate thereof was made accordingly of their Opinions to Sir Henry Sidney, Knight, Lord Deputy of Ireland, P. 11 Eliz. Dyer f. 282. b. pl. 26. and see Roll's Cases, 1 part, f. 477 H. 4. 5, and 6.

If a Bishop make a Lease to the King for Years, and before Inrollment thereof, the Dean and Chapter confirm it, and after the Lease is Inrolled, this is a good Confirmation, for this is only an Assent, which may be as well before the Lease as after, Tr. 8 Jac. in *Seacat*. Sir Edward Dimmock's Case, Roll's Cases, 1 part, f. 478. but a Confirmation after the Death of the Bishop comes too late by the Opinion of *Catlin*, *Southcote* and *Windham*, Harb. Rep. M. 14, and 15. Eliz. (1590)

Confirmation
before Inrol-
ment good
&c.

And note, that although it be said by the 1 Eliz. & 13 Eliz. that all Grants, Leases, &c. made, granted, &c. (other then Leases for three Lives, or one and twenty Years, according to those Acts) should be utterly void and

Grants, &c.
not warrant-
ed by the
Statutes bind
the Grantors.

and of none effect, to all Intents, Constructions and Purposes, yet Grants or Leases, &c. not warranted by those Statutes, though they are void against the Successor, yet they are good, and shall bind the Grantor or Lessor, if it be a Sole Corporation, or so long as the Dean or other Head of the Corporation remain, if it be a Corporation aggregate of many, for the Statute was made in benefit of the Successor, *Co. Lit. f. 45. a. Co. 3 Lib. f. 59, b. 60. a. P. 39 Eliz. C. B. Hunt and Singleton's Case*, there cited to be so adjudged, *Brow. Rep. 2 part, f. 134, & 135. Gould Rep. f. 302. & vide P. 10 Jac. Wake and Dean and Chapter of Norwich Case, M. f. 875. pl. 1223. in fine, & Co. Rep. 10 Lib. f. 59. a. & 11 Lib. f. 73.*

*Confirmations by whom
so be made.*

Observe, that concurrent Leases made by Archbishops and Bishops, are to be confirmed by the Dean and Chapter or Deans and Chapters, if there be several Chapters; Grants made by the Dean, are to be confirmed by the Bishop and Chapter; Grants made by the Archdeacon or Prebend, by the Bishop and Dean and Chapter, *Dyer. f. 61. a. 30 Roll's Cases, 1 part f. 481. P. 3. and the Grants of Parsons and*

cars, are to be confirmed by their Patrons and Ordinaries, *Co. Rep. 11 Lib. f. 77. 4. Roll's Cases, 1 part f. 481 Q. 2.* and Grants by an Incumbent of a Donative, by the Patron alone, *Roll's Cases, 1 part f. 481 R. 1.* and where the Patron of a Prebend, then the King, and Dean and Chapter, and not the Bishop ought to confirm.

Where a Parson of a Church, of which the Bishop is Patron and Ordinary makes a Lease, which is confirmed by the Bishop, without the Dean and Chapter, who ought to have joyned, and afterwards the Parson dyes, and the Bishop Collates another to the Benefice, who makes a Lease of his Parsonage, which is confirmed by the Bishop, and Dean and Chapter, and afterwards the Bishop is Translated, in this Case it was held the first Lease was good, and that it should be binding, during the Life of the Bishop, and Successor Incumbent, who found the Church charged, *P. 19 Eliz. C. B. Dy. f. 356. b. pl. 42.* so if a Prebend make a Lease, and the Bishop being Patron confirms it, though this be not good, to bind the Successor of the Bishop, yet this shall bind the Bishop during

*Confirmation
of the Bishop
alone where
good.*

ring his Life, and all claiming under him, for the Confirmation of the Dean and Chapter, is required only that the Possessions be not aliened in prejudice of the Successor, and so it was agreed in point, in *Smyth and Bow's Case*, Tr. 15 Jac. B. R. Roll's Cases, 1 part, f. 479 M. 2, 3. & f. 481. P. 2. & vide Leon. Rep. 1 part, f. 235.

*Assent a
good Confir-
mation.*

If a Dean Lease any of his Possessions, of which he is Sole seized with the Assent of the Chapter, this is a good Confirmation, because the Dean hath solely the Estate, and the *Writ de fine assensu Capituli* does prove that there needs only an Assent, and if the Dean be Sole seized, and not with the Chapter of certain Possessions, he may Lease them by these words in the Deed, *quod Decanus ex assensu totius Capituli* &c. *missa*, and the Seal of the Chapter put to the Deed, this is a good Confirmation, for it is a good Assent, but if the Dean and Chapter are jointly seized, and the Dean Leases with Assent of the Chapter, and annexes the Seal of the Chapter to the Deed, this is void, and shall not bind the Chapter, because they have an Estate in them, as well as the Dean hath in him, and may make

1. 19 Jac. B. R. inter Tomlinson and
Creek, so agreed, & vide 21 H. 7. 7. &
Hil. 29 H. 8. C. B. Chaspin's Case, Dyer
f. 42. b. pl. 72, & Ball's Cases, 1 part, f.
478 R. 1. 2. 4.

Grants by Parsons, Vicars, Prebends,
&c. after Collation, Admission and In-
stitution, and before Induction or In-
stallation, although confirmed as afore-
said, are not binding to the Successor,
for *Persona Ecclesie nunquam dicitur Im-
pensis ante inductionem, nec habet jus
in res sed ad rem ante inductionem*, P. 5.
Eliz. C. B. Dyer f. 221. pl. 18.

Confirmati-
ons when
void.

If a Parson, Vicar, Prebend, &c.
make a Lease for Years, the Land may
be confirmed to the Lessee for part of
the Term that is for so many Years
thereof, but if *dimissionem predicationem*
be confirmed for part of the Term, as
Terminum ultra, that would be absurd and re-
pugnant, and would stand good for the
whole Term; and as such Lease may be
confirmed for part of the Term, so it
may for part of the Land, M. 16, 17.
Eliz. C. B. Dyer f. 338. b. pl. 43. & f.
b. pl. 4. & vide M. 37, 38 Eliz. C.
Ballfore and Foord's Case, Cro. Eliz. f.
47. pl. 12. & f. 472. pl. 34. & Co.
p. 5 Lib. f. 81.

Confirmati-
on for part of
the Term
good.

*Succeeding
Patron, &c.
confirms and
good.*

A Parson made a Lease, which was confirmed by the succeeding Bishop and Patron, neither of them being Bishop or Patron, when the Lease was made, yet this was adjudged a good Confirmation, *Tr. 2 Car. 1 C. B. Sir Robert Banister's Case, Cro. Car. f. 38. pl. 3.*

*Confirmation
of an Usur-
per not good*

If an Usurper present, and his Presentee makes a Grant, which is confirmed by the Usurper and Ordinary, and after the Presentee is removed by *Quare Impedit*, &c. this Grant shall not bind the Incumbent that comes in by the Presentation of the true Patron, because when the Confirmation was made, there was neither any Patron nor Parson of right *9 H. 6. 33.* and a Church before the *13 Eliz.* being full of an Incumbent, the true Patron grants away the next avoidance, and then confirms a Lease made by the said Incumbent, who afterwards dyes, and then the Grantee of the next avoidance presents the Incumbent of such Grantee shall avoid the Lease made by his Predecession, and his entry upon the Lessee avoids the Lease for ever, both for himself and his Successor, *P. 16 Car. 1 B. R. Sir Edmond Plowden and Oldfield*

field's Case, Roll's Cases, 1 part, f. 480
N. 4, 5. & Cro. Car. f. 582. pl. 7. &
Jones Rep. f. 454.

If an Husband be seized in right of his Wife of an Advowson, and the Incumbent makes a Lease warranted by the Statutes, which is confirmed by the Ordinary, and the Husband and his Wife being Patrons, this shall bind the right of the Wife but during Coverture, and the Successor after the Incumbent's Death, that comes by Presentation of the Wife, shall avoid it; so if Tenant in Tayle being Patron, confirm the Grant of the Parson with the Bishop, this shall not bind the Incumbent of the issue in Tayle; but if a Parson make a Grant which is confirmed by the Patron and Ordinary, and afterwards he is deprived, yet the Grant remains good, M. 3, & 4. P. & M. Dyer f. 133. a. pl. 1. Roll's Cases, 1 part, f. 479 N. 1, 2. & f. 476. F. 1, 2 P. 14 Jac. B. R. Mawnd and French Case, Roll's Rep. 1 part, f. 161.

Husbands
Confirmati-
on binds not
the Wife,
&c.

If a Church be full of a Parson, and afterwards another is made Parson, and Inducted by the Ordinary, and he makes a Grant which is confirmed by the Patron and Ordinary, this Grant is

Confirmation
void where.

is void because he was not Parson at the time of the Grant, 9 H. 6. 34. and if a Church be void, and one enters and occupies the same wrongfully, without any Presentation or Institution, and such Parson makes a Grant which is confirmed by Patron and Ordinary, yet it is void, because he was never Parson, for one cannot be without Presentation or Collation, 9 H. 6. 34. 10 H. 6. 11. & Roll's Cases, 1 part, f. 477.

*Grants of
Offices bind
not the Suc-
cessor with-
out Confir-
mation.*

It hath been Resolved, that the Grant of an ancient Office, as Commissary, Official, Steward, Bailiff, Park Keeper, &c. to one with the ancient Fee by a Bishop, shall not bind the Successor, if it be not confirmed by the Dean and Chapter, for such Grants are not restrained by the 1 Eliz. but remain still at Common Law, and therefore ought to be confirmed by the Dean and Chapter; but if such ancient Office hath formerly been usually granted to one for Life, and be afterwards granted to 2 for Life, and the Grant is confirmed by the Dean and Chapter, yet this Grant shall not bind the Bishop's Successor, because such Office had not been usually granted so before; And note that although the Bishoprick be founded lately, yet the

the Grant of a necessary Office, with a reasonable Fee, of which the Court shall Judge, being confirmed, &c. will bind the Bishop's Successor, *Tr. 11 Jac. Bishop of Salisbury's Case, Co. Rep. 10 Lib. f. 58. b. 61. b. 82. a. & Tr. 8 Car. 1. B. R. Walker and Lamb's Case, Cro. Car. f. 258. pl. 2. & Jones Rep. f. 263.*

And if such Office have been granted formerly in Reversion it may be granted so still, *M. 8 Car. 1. B. R. Young and Stoell's Case, Cro. Car. f. 279. pl. 19. and Jones's Rep. f. 310.* and it hath been held by some, that where such Office is granted with the usual Fees, and also a new Fee over and above the old accustomed Fees, which Grant is confirmed by the Dean and Chapter, or if the old Office with the ancient Fees, and also a new Office which was never granted before, be granted by one Deed, and duly confirmed as aforesaid, although this be void against the Successor as to the new Office; yet it is good for the ancient Office, and ancient Fees, *sed Quare vide P. 1 Car. 1. Rot. 607. Bishop of Chechester & Free-lana's Ca. Brid. Rep. f. 29 Leye's Rep. f. 71. & see M. 9 Jac. C. B. Bishop of Ely's Case, Brownl. Rep. 2 part, f. 137. & Cro. Car. f. 47. pl. 7.*

*Offices grant-
able as for-
merly.*

Lease for
three Years,
&c. how in-
terpreted.

A Parson let a Lease for three Years, and those ended for three others, and those ended for three others, during the Life of the Lessor, and by the Opinion of most of the Benchers of the middle Temple, and Divers Justices of the Common Bench, this was held to be but a Lease for nine Years if the Lessor so long live (and be resident upon his Parsonage and not absent, *ultra* 80 daies in any 1 Year) but if the words had been and so from 3 Years to 3 Years during the Life of the Lessor, perhaps it would have been otherwise, *M. 28 H.8. Dyer f. 24. a. pl. 155.* and see *14 H.8. 12.* and *Plow. Com. 274. a.*

A Rectory
Leased, who
is to serve
the cure.

The King Let a Rectory to one Tavernor rendring Rent, and granted to him to be discharged, *de omnibus & singulis Pensionibus, Portionibus, & denariis summis excent de Rectoria*, and it was decreed in the Court of Augmentation, that the K. should find the Curate; and if a Common Person Let without such words of discharge, and no clause in the Indenture, who shall find the Curate, then the Lessor shall find him, because the service of the cure is a Spiritual Administration, and cannot be Let, and the service is not issuing

issuing out of the Parsonage, but annexed to the Parson, *Tr. 36 H. 8. Dyer f. 58. b. pl. 8.*

If a Parson or Vicar, having cure of Souls, make a Lease, it shall be in force no longer then he is Resident and serves the cure there, without being absent above 80 daies in one Year, by *13 Eliz. cap. 20.* so that it seems it shall be void against himself, and all Covenants and Bonds, made by any such Parson or Vicar, for suffering any Person to enjoy any such Benefice, or to take the profit thereof (which in effect, amounts to a Lease) shall be adjudged void to all intents and purposes, and of no other force then such Leases are, *14 Eliz. cap. 11. & vide Brownl. Rep. 2 part, f. 132. & 27. Eliz. C. B. Marrow's Case, Godb. Rep. ps. 20. pl. 38.*

*Leases by
Parsons void
by non resi-
dence.*

But there is a *Quere* in *Dyer*, whether such Leases shall be void upon 80 daies absence, *ab initio*, or but from the time of the absence by 80 daies, and as to this, some have held one way and some another, *vide M. 22, 23 Eliz. C. B. Evans and Heister's Case, Dyer f. 372. b. pl. 11.* but observe that this not serving the cure must be voluntary, for it seems if a Parson, Vicar, &c.

*When the a-
voidance of
such Lease
shall begin.*

b: suspended, inhibited, or disabled, to serve the cure by the space of 80 daies, this shall not make such Lease void, but it hath been held, that if a Parson be Resident and do not serve the cure, or serve the cure and be absent 80 daies, *simul & semel*, that in both these Cases it will make the Lease void, P. 39 Eliz. B. R. *Dobbins* and *Gerrard's Case*, *Gouldes. Rep. p. 162, 163. & vide M. Rep. 448. in principio, & P. 9. Jac. B. R. Shepherd and Towlsie's Case, Boulstr. Rep. 1 part, f. 111.*

Lease void
when.

It hath been a *Quere* also, whether after 80 daies are incurred after the Death of a Parson or Vicar, &c. making such Lease, if thereupon it shall not be void, and Justice *Crook* in his reports saith, it was adjudged in *Mott* and *Hale's Case*, that after 80 daies incurred, after their Deaths such Leases should be void, but *Moor* in his reports saith, that the Judges were divided in Opinion as to that point, H. 31 Eliz. B. R. *Mott* and *Hale's Case*, *Cro. Eliz. f. 123. pl. 1. & M. Rep. f. 270. pl. 422.* but some say that this point coming in question, Tr. 14 Car. 2. B. R. between *Bayly* and *Mournes*, it was then adjudged, that Death doth not avoid such

such Leases, *Ideo Quere*; and note that Confirmation of Patron and Ordinary in such Cases amends not the matter, for if the Lease be void, the Confirmation is of no force.

Note, it hath been held, that where an Archdeacon makes a Lease for three Lives according to the Statute, and the Lessee makes a Lease for an 100 Years, and the Archdeacon, Bishop, and Dean, and Chapter confirm it, yet this shall not bind the Successor, for if such Confirmation shall not be said a conveyance within the Statute, then shall the Statute signify little or nothing, and the good intention and meaning of the Act shall be defeated and defrauded, *Co. Rep. 5 Lib. f. 15. a.*

What Lease within the Statute, &c.

A Lay-Person being presented to a Benefice before the 13 *Eliz.* made a Lease for 60 Years, which was confirmed by the Patron and Ordinary, and the Successor of the Parson became bound in an Obligation after the Statute, 14 *Eliz.* that the Lessee should enjoy the Term, and after the Obligation entred, the Successor was absent above 80 daies in one Year, and so the Obligation became void by such absence or no was the Question, and it was ad-

Obligation to enjoy, &c. where good.

judged that it was not void by the Statute 14 *Eliz.* for the Lease being good, so the Obligation for Injoyning the same should be good also, *P. 42 Eliz. Rep. 127. B. R. Costard and Wingate's Case, M. Rep. f. 606. pl. 836. & Cro. Eliz. f. 775.*

*Bond to in-
joy, &c.
where void.*

A Parson made a Bond to resign upon request, and after his Induction, he made a Lease to his Patron of part of the Glebe for one and twenty Years, and afterwards was absent above 80 daies in one Year, and upon an Action brought upon this Bond, the Incumbent pleaded the 13, & 14 of *Eliz.* and averred, that this Bond was made to secure this Lease, and to compell him that he should not avoid the Lease by absence, least he should be required to resign, and this was adjudged a good Plea, and an apt Averment, *M. 43, 44 Eliz. C. B. Webb and Hargrove's Case, M. Rep. f. 641. pl. 883.*

*Acceptance
makes the
Lease good
when and
when not.*

If a Bishop seized of Tythes in right of his Bishoprick, make a Lease of the same for life or lives, rendring the ancient Rent (the Tythes having been usually demised for the same Rent) and then dyes, this Lease is void against his Successor, and no acceptance of the Rent

Rent will make it good, for this Rent being reserved upon a Lease of Tythes for Life, there is no remedy for it by distress or Assize, so the Lessee is not compellable to pay it, and because it is not payable as the Law appoints it is therefore void, *vide* 5 E. 3. 30 *Ass.* 5. but if it had been a Lease for Years, it had been otherwise, because Debt lies, yet the Books make a *Quare* in it, *vide* Tr. 2 Jac. B. R. *Talentine and Denton's Case*, *M. Rep.* f. 778. pl. 1078. & Tr. 5 Jac. B. R. *Bickman and Gamble's Case*, *Cro. Jac.* f. 173. pl. 14.

A Prebend was usually Let, with the Exception of all Crab Trees, and such like Trees, and afterwards the Prebendary made a new Lease of the Prebendship, omitting the exception of the Crab Trees, &c. receiving the ancient Rent, and this Lease was held to be void against the Successor, for there is more ~~let~~ then was anciently, because the Trees were formerly excepted, and so this Lease not binding against the Successor, P. 15 Jac. B. R. *Smith and Bowle's Case*, *Boulstr. Rep.* 3 part. f. 290. *Cro. Jac.* f. 458. pl. 5 & *vide* *Leye's Rep.* f. 74.

If a Parson let his Rectory excepting the Glebe, the exception is void, for no Rectory can be without Glebe, but he may except parcel of the Glebe, and it shall be good, but in pleading the license of a Rectory, this shall be taken for the whole Rectory, and not for parcel. *Mabie's Case, Wynd Rep. f. 230.*

Grant of the
next avoidance by a
Bishop, &c.
void.

It hath been adjudged, that the Grant of the next avoidance of a Benefice by a Bishop or Dean and Chapter is within the Restriction of the Statute before mentioned in this Chapter, and shall be void against the Successors, and it hath also been Resolved, that if a Dean and Chapter grant a Rent Charge out of their Possessions, that it is restrained by the equity of the Statute, though these cannot be said any part of the Possessions of their Churches. *Co. Rep. 5 Lib. f. 154.* and so it was adjudged, *M. 27, 28 Eliz. Co. B.* between the Dean and Chapter of Hereford, and the Bishop of Hereford and Ballard, as my Lord Cook reports it, and see *M. 32, 33 Eliz. G. B. Sale and Bishop of Coventry and Lichfield, cited in Co. Rep. 3 Lib. f. 59. b. & Rolles Cases, 1 part, f. 159. & 169. & Brid. Rep. f. 39 Co. Rep. 10 Lib. f. 60. b. & Leon. Rep. 1 part f. 307.* ○

If a Writ of Annuity should be brought against a Parson or Vicar, upon a feigned Prescription or Grant supposed to be made before the Statute, and he Prays in aid of the Patron and Ordinary, and the Plaintiff obtains a Verdict, and all this is done by Practice and Fraud to charge the Glebe, this shall be void against the Successor, for although the Annuity charge the Parson or Vicar and not the Possessions, yet this is within the mischief, to Wit, the impoverishing of the Successor, cause of Dilapidations, and decay of Spiritual Livings and Hospitality, which are the mischiefs mentioned in the Preamble, *Co. Rep. 5 Lib. f. 14. b. Eytrū's Case* there cited, & *vide Co. Rep. 10 Lib. f. 61. a. & Bridg. Rep. f. 30.*

Recovery in a Writ of Annuity against a Parson binds not the Successor.

A Parson became bound in an Obligation with condition not to be absent from his Benefice by the space of 80 daies in one Year, nor permute or resign without the consent of the Patron, and afterwards he became non resident, and the Bond being sued, he pleaded the Statute, 14 *Eliz.* by which all Leases of Parsons made of their Benefices, and all Obligations for enjoying, where they are absent by 80 daies *et ultra* in one Year, shall be void,

Plea to a bond where bad.

and averred, that he was absent 80 daies and saith not *& ultra*, and this upon demurrer was adjudged an ill Plea, for he may be absent for 80 daies, and come again in the Night of the 80 day, and then the Bond is not void, *H. 30 Eliz. B. R. Gosnall and Kindlemarsh Case, Cro. Eliz. f. 88. pl. 10. & 490. pl. 7 M. 37, 38 Eliz. B. R. Rot. 31. Earl of Lincoln and Horkin's Case, M. 26 Eliz. B. R. Cox's Case, Leon. Rep. 3 part, f. 102. pl. 148. & P. 30 Eliz. B. R. S. John and Pettit's Case, Leon. Rep. 1 part, f. 100. pl. 129.*

Lease in Reversion not binding to the Successor.

The Dean and Chapter of Pauls, made a Lease of an House in London, to one for forty Years, which House was then in Lease for 10 Years to another, and this Lease was adjudged void by the 13 *Eliz.* and not warranted by the 14 *Eliz.* which makes Leases of Houses in Cities to be good for 40 Years, so as it be not in Reversion of any other Lease, for although this Lease be to Commence immediately, yet it is in Law, a Lease in Reversion, and therefore within the words of the Statute and shall be avoided by the Successors *P. 39 Eliz. C. B. Hunt and Singleton's, Case, Cro. Eliz. f. 564. pl. 25. & vide Co.*

Co. Rep. 3 Lib. f. 60. a. & Roll's Cases, 1 part. f. 159.

Note, where a Lease is void *ipso facto* by the Death of the Lessor, there no acceptance of the Rent by the Successor, will make the Lease good, as if a Parson, Vicar or Prebend, make a Lease not warranted by the Statutes, for one and twenty Years, rendring Rent and dyes, here no acceptance of the Rent by the Successor will affirm the Lease, because the same was void without entry or Ceremony, but if a Parson, Vicar or Prebend, make a Lease not warranted by the said Statutes, for life or lives reserving Rent and dye, and the Successor before entry accepts the Rent, or receives fealty of the Tenant, then such Lease shall bind him for his time, for this being an Estate of freehold, cannot be avoided before entry, *Co. Rep. 3 Lib. f. 65. a. 11 E. 3 Tit. Abbot. 9. 8 H. 5. 19. 37 H. 6. 3. 24 H. 8 Tit. Leases, Br. 19. F. N. B. 50. & Dyer f. 239. b.*

Acceptance
it will make
the Lease
good where
not.

But if a Bishop make a Lease for Years not warranted by the Statutes and dye, if the Successor accepts the Rent, he shall not avoid the Lease during his time, *Co. Rep. 3 Lib. f. 65. a.*

Acceptance
where it
binds,

or

or if the Bishop appoint a Balliff to receive his Rents, and he receives the Rent from such Tenant (amongst the rest of the Tenants) who holds by such voidable Lease, and pays the same over to the Bishop with the other Rents, not acquainting the Bishop therewith, and he receives the Rent, this is a good acceptance and shall bind the Bishop. *H. 5 Jac. C. B. between Wheeler and Danby, adjudged by the Court, Roll's Cases, 1 part, f. 476 D. 1. & vide Cro. Car. f. 95.*

Where it
hands not,

If a College make a Conveyance in Fee, within the 13 Eliz. reserving Rent, and the Master Idys, and his Successor being Master accepts the Rent, and gives a note under his Hand of the receipt thereof, without putting his Seal to the same, and without Authority of the College, this acceptance shall not bind the College, but they may enter during the Life of the Master who accepted the Rent, *Roll's Rep. 1 part, f. 172.* but having (I fear) Trespas'd too much in this Chapter upon the Reader's Patience, I shall here conclude and proceed to the next.

CHAP. X.

*How Clergy-men are Incapacitated to take
Farms, or follow secular Affairs, and
how they are punishable for incontinency
by their Superiours, and by whose
power and Authority Courts Ecclesiastical
are to be kept, and in whose name
and stile their Ecclesiastical Process are
to be, and with what Seal to be Sealed.*

FOR the more quiet and vertuous in-
crease and maintainance of
Divine Service, and the Preaching and
Teaching of the Word of God, with
godly and good example, and increase
of Devotion, it is enacted by the 21
H. 8. that no Spiritual Person of what
degree soever, shall take to farm to
himself, or to any Person or Persons to
his use, of any Person whatsoever, by
Letters Patents, Indentures, Writings,
by Word, or otherwise by any manner
of means, any Manors, Lands, Tene-
ments, or other Hereditaments, for
Term of Life, or Term of Years, or at
Will, upon pain to forfeit ten pounds for
every Month, he or any to his use shall
occupy

*The Penalty
of Spiritual
Persons Far-
ming Lands
&c.*

occupy the same by virtue of such Lease or Grant, one Moiety to the King, and the other to the Informer, to be recovered in any of the King's Courts, 21 H. 8. cap. 13.

*The Penalty
for buying
and selling.*

And it is further enacted, that no Spiritual Person or Persons, of what Estate or Degree soever they be, shall by himself, nor by any other for him, nor to his, buy to sell again, for lucre, gain, or profit, in any Markets, Faires or other Places, any manner of Cattell, Corn, Lead, Tin, Hides, Leather, Tallow, Fish, Wooll, Wood, or any manner of Victuals or Merchandize whatsoever, on pain to forfeit the treble value of the things so brought to sell again, one Moiety to the King, and the other to the Informer, to be recovered as aforesaid, 21 H. 8. cap. 13.

*In what Cases
they may
sell goods,
&c.*

But it is provided by the said Act, that if a Spiritual Person, without Fraud or Covin, do buy any Horses, Mares or Mules, for himself or Servants to ride about their necessary business, or any other Cattell or Goods, to be employed and put in and about his necessary apparel of his own House, or of his Person or Servants, or in, for or about the occupying, manuring or tillage

lage of his Glebe or Demefn Lands annexed to his Church, or for the expences of his Houſehold keeping, and after ſuch buying, they prove not for the purpoſes they were bought for, then ſuch Spiritual Perſon may Lawfully bargain and put away the ſame. And it is further provided, that every Spiritual Perſon, not having ſufficient Glebe or Demefn Lands in their own Hands in right of their Churches, for Paſturage of Cattel, or for increaſe of Corn, for expences of their Houſholds or for their Carriages or Journies, may Farm other Lands, and buy and ſell Corn and Cattel, for the only manuring, tillage, and paſturage of ſuch Farms, ſo that the increaſe thereof be alway imployed and put to, and for the only expences in their Houſholds and Hoſpitalities, and not in any wiſe to buy and ſell again for any other Commodity, Lucre, or Advantage, any Corn or Cattel renewing, coming or growing in and upon any ſuch Farm or otherwiſe, but only the Remainer and Overplus above their expences of their Houſehold, if any ſuch ſhall happen to be bread and increaſe thereof without Fraud and Covin, 21 H. 8. cap. 13.

And

*The Penalty
for keeing
Tan-house or
Brew-house.*

And It is further enacted, that no Spiritual Person Beneficed with cure of Souls, shall occupy by himself, or any to his use, any Parsonage or Vicarage in Farm, of the Lease or Grant of any Person or Persons; nor take any Profit or Rent out of any such Farm, upon pain to forfeit forty shillings a Week, and ten times the value of the Rent, or Profit he shall take out of such Farm. And it is further enacted, that no Spiritual Person of what degree or condition soever he be, shall have, use or keep by himself, or any to his use, any manner of Tan-house or Tanhouses, Brew-house, or Brew-houses, to any other use, intent or purpose, then only to be spent and occupied in his or their own Houses; upon pain to forfeit ten pounds a Month, one Moiety to the King, and the other to the Informer, to be sued for as aforesaid, 21 H. 8. cap. 13.

*They may
Farm Hou-
ses, &c.*

But note it is provided by the said Statute, that it may be Lawfull to every Spiritual Person or Persons, to take in Farm, any Messes, Mansions, or dwelling Houses, having but only Orchards or Gardens, in any City, Borough and Town, for their own habitation and dwelling; so that no Person Spiritual,

Spiritual; other then such as are Licen-
ced and allowed by Law, have any
Liberty of non residence by colour of
the said Proviso, 2 I H. 8. cap. 13.

An Information was exhibited
against two Parsons, upon the Statute
2 I H. 8. against one of them for non-
residence, and against the other for ta-
king of a Farm, and one of them plea-
ded sickness, and that by advice of his
Physicians, he removed into better Air
for recovery of his health, and the o-
ther pleaded that he took the Farm on-
ly for the maintenance of his House and
Family; and these Pleas were held
justifiable by the whole Court, *see* to
Jac. I. S. Plaintiff against *Martin* and
Gunnison; *Boulstr. Rep. 2 part, f. 18.*

In the 1 H. 7. I find a Statute in the
Printed Books of Statutes, put forth by
Rastal, Poulton and Keeble, and not any
where repealed that I can find, so I sup-
pose it is still in force and power, by
which Statute it is enacted, that it shall
be Lawfull to all Archbishops and Bi-
shops, and other Ordinaries, having
Episcopal Jurisdiction, to punish and
chastise Priests, Clerks, and Religious
Men being within the bounds of their
Jurisdiction, as shall be convicted afore-
them,

Priests, &c.
punishable
for inconti-
nence.

them, by Examination, and other Lawfull proof, requisite by the Law of the Church, of Advowtry, Fornication, Incest, or any other fleshly incontinence, by committing them to Ward and Prison, there to abide for such time as shall be thought by their discretions convenient for the quality and quantity of their Trespasse, and none of the said Archbishops, Bishops, or other Ordinaries aforesaid, shall be thereof chargeable to or upon any Action of false or wrongfull Imprisonment, but that they be utterly thereof discharged in any of the Cases aforesaid, by virtue of the said Act, 1 H. 7. cap. 4.

All Citations, &c. to be in the King's Name.

In the 1 E. 6. cap. 2. It is said, that whereas the Archbishops and Bishops, and other Spiritual Persons in this Realm, do use to make and send out their Summons, Citations, and other Process in theirow Names, and in such Form and manner as was used in the time of the usurped power of the Bishop of Rome, contrary to the Form and Order of the Summons and Process of the Common Law, used in this Realm, (seeing that all Authority of Jurisdiction, Spiritual and Temporal, is derived and deducted from the King's

King's Majesty, as Supream Head of these Churches and Realms of England and Ireland, and so justly acknowledged by the Clergy of the said Realms) that all Courts Ecclesiastical, within the said two Realms, be kept by no other Power or Authority, either forreign or within the Realm, but by the Authority of his most excellent Majesty; it is therefore enacted, that all Summons and Citations, or other Process Ecclesiastical, in all Suits and Causes of Instance betwixt party and party, and all Causes of Correction, and all Causes of Bastardy or Bigamy, or *Jure Patronatus*, Probates of Testaments, and Commissions of Administrations of Persons deceased, and all acquittances of and upon accounts made by the Executors, Administrators, or Collectors of Goods of any Dead Person, be from the first Day of July, then next following, made in the Name and with the Stile of the King, as it is in Writs Original or Judicial at the Common Law, and that the Test thereof be in the Name of the Archbishop or Bishop, or other having Ecclesiastical Jurisdiction, who hath the Commission and Grant of the Authority

thority Ecclesiastical, immediately from the King's Highness, and his Commissary, Official or Substitute exercising Jurisdiction under him, shall put his Name in the Citation or Process after the Test, *1 E. 6. cap. 2.*

*The King's
Arms, &c.
to be put in
the Seals of
Office, &c.*

And it is further enacted, that all manner of Person or Persons, who have the Exercise of Ecclesiastical Jurisdiction, shall have expressed in their Seals of Office, the King's Highness Arms decently set, with certain Characters under the Arms, for the knowledge of the Diocese, and shall use no other Seal of Jurisdiction, but wherein his Majesty's Arms be Ingraven, upon pain, that if any Person shall use Ecclesiastical Jurisdiction in this Realm of England, Wales, or other his Dominions or Territories, and not send or make out the Citation or Process in the King's Name, or use any Seal of Jurisdiction, other then before limitted, that every such Offender, shall incur and run in the King's Majestie's displeasure and indignation, and suffer Imprisonment at his Highness's Will and Pleasure, *1 E. 6. cap. 2.*

*Archbishop
of Canterbu-
ry, &c. may
use his own
Seal,*

But it is provided, that the Archbishop of Canterbury, for the time being,

ing, shall use his own Seal, and his own Name, in all Faculties and Dispensations, according to the Tenor of an Act thereof made, and that the said Archbishops, and Bishops shall make, Admit, Order, and Reform their Chancellors, Officials, Commissaries, Advocates, Proctors, and other their Officers, Ministers, and Substitutes, and Commissions of Suffragan Bishops, in their own Names, under their own Seals, as they have used heretofore. And shall certify to the Court of Tenths, their Certificates under their own Names and Seals, and shall make Collations, Presentations, Gifts, Institutions, and Inductions of Benefices, Letters of Order, and Dimissories under their own Names and Seals, as formerly, notwithstanding the said Act, or any thing therein contained, 1 E. 6. cap. 2.

And it is further provided, that all Process to be made or awarded by any Ecclesiastical Person or Persons, for the Tryal of any Plea or Pleas, that shall depend in any of the King's Courts of Records at the Common Law, and limited by the Laws and Customs of this Realm, to the Spiritual Courts to try the same; that the Certificate of
the

*Certificates
how to be
made.*

the same, after the Tryal thereof, shall be made in the King's Name for the time being, and with the Stile of the same King, and under the Seal of the Bishop, Graved with the King's Arms, with the Name of the Bishop, or Spiritual Officer, being to the Test of the same Process and Certificate, and to every of them, 1 E. 6. esp. 2.

Minister deprived by whom.

Note, that when any Minister is complained of in any Ecclesiastical Court, belonging to any Bishop for any crime, the Chancellor, Commissary, Official, or any other, having Ecclesiastical Jurisdiction to whom it shall appertain, shall expedite the Cause by Process, and other Proceedings against him, and upon Contumacy for not appearing, shall first suspend him, and afterward his Contumacy continuing Excommunicate him. But if he appear and submit himself to the course of Law, then the matter being ready for Sentence, and the Merits of his Offence exacting by Law, either Deprivation from his Living, or Deposition from the Ministry, no such Sentence shall be pronounced by any Person whosoever, but only by the Bishop, with the Assistance of his Chancellor, the Dean, (

they

they may conveniently be had) and some of the Prebendaries, if the Court be kept near the Cathedral Church, or of the Archdeacon if he may be had conveniently, and two other at the least Grave Ministers, and Preachers to be called by the Bishop, when the Court is kept in other places, *Can. 122.*

And now, Reverend Sirs, having (not without great pains and study, which *Solomon* saith is a weariness to the flesh) arrived at the Period of my intended purpose, before I conclude, give me leave to acquaint you, that my Lord Cook in his Epilogue to his fourth part of his Institutes saith, that he that takes upon him to Write, doth Captivate all the Powers and Faculties both of his Mind and Body, and must be only Intensive to that which he Collecteth, without any Expression of Joy or Cheerfulness, whilst he is in his Work, the truth whereof I have sufficiently experienced, whilst I was Composing this Treatise; So after this, if my pains do not Merit your thanks, yet I hope you will be so Candid as gently to censure, lovingly to Correct, or easily to Pardon, such errors and mistakes

The Conclusion.

The Pastor's, &c. Chap. X.

I thank you have taken escaped the Bress
 on my Pen; knowing that *honorum est*
in rebus I for I take leave, and shall
 wind up all in this short Sentence; *Vide*
quoniam mihi soli Laboravi, sed omnibus
acquiritur scientiam. I have been
 called by the Bishop, when the
 Dec. 1. 1723. *Deo gloria & gratia*

And now, Reverend Sir, having (not
 without great pains and study, which
 I will leave to the world to judge)
 at the end of my intended
 paper, before I conclude, give me
 leave to acquaint you that my I told

the writer

God in his Epilogue to his fourth part
 of his Institutes says, that he that
 takes upon him to write books of
 all the Powers and Principles both of
 his Mind and Body, must be only
 Inventive to that which he Collects,
 without any Exaction or Joy or
 Contentment; whilst he is in his
 Work, the truth whereof I have said.

My Experience, when I was
 composing this Treatise, doth testify
 it my pains do not merit your thanks,
 yet I hope you will be to Candid as
 ready to excuse, lovingly to correct,
 or easily to Pardon, such errors and

de
ff
m
de
us
I
I
O

w
2
is
p
al
C
of
to
all
ind
ind
w
O
W
ind
C
it
p
R
O